SUPREME COURT, U. S.
FEB 28 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-404

LEWIS COLTEN,
Appellant,

v.

COMMONWEALTH OF KENTUCKY,
Appellee.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF KENTUCKY

APPENDIX

Filed September 20, 1971
Probable Jurisdiction Noted January 10, 1972

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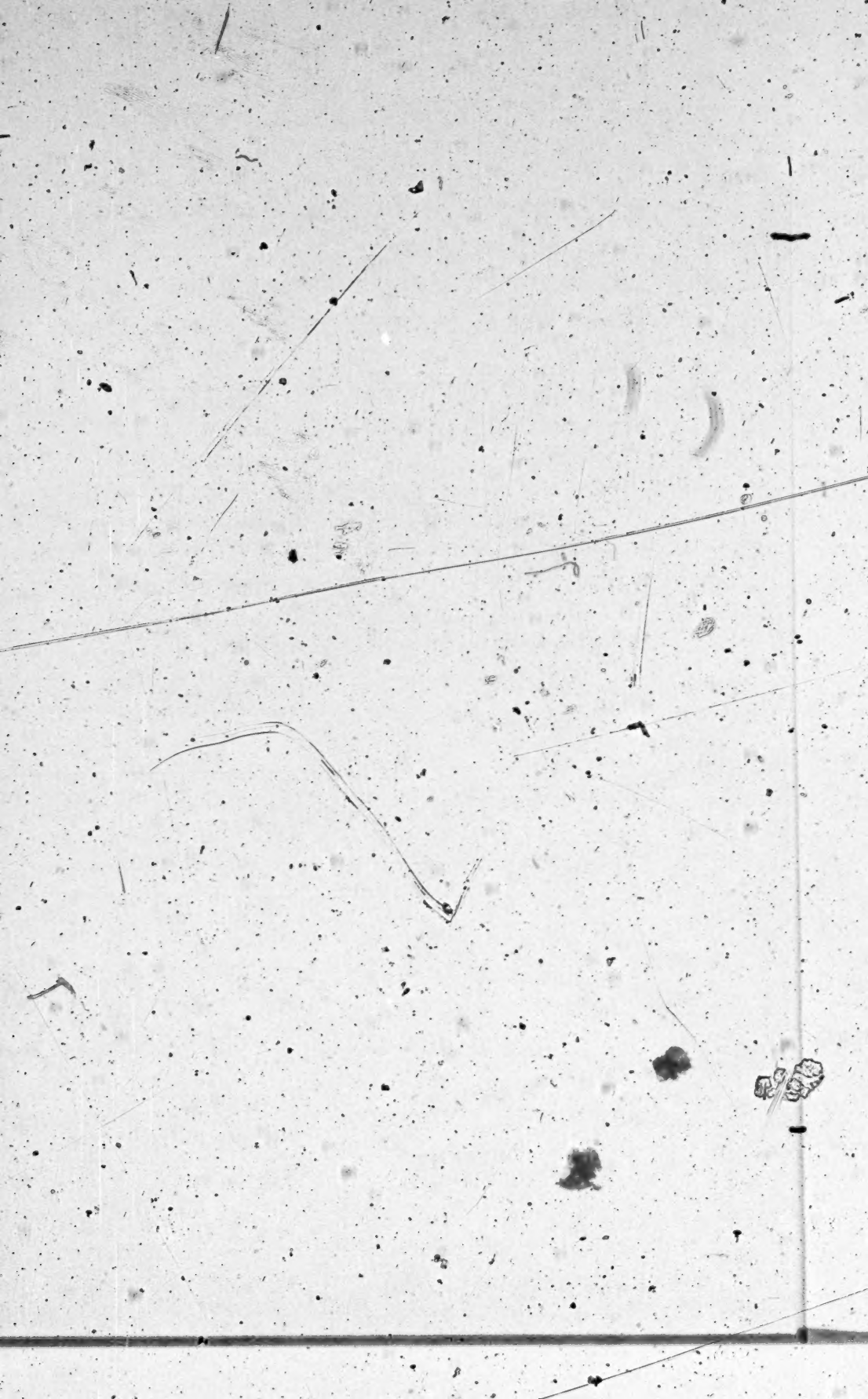
JUDGMENT OF FAYETTE CIRCUIT COURT is not included in this Appendix but is printed in full in the Jurisdictional Statement, pages 12a-15a

JUDGMENT OF THE KENTUCKY COURT OF APPEALS is not included in this Appendix but is printed in full in the Jurisdictional Statement, pages 1a-11a



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No. 71-404

LEWIS COLTEN,

Appellant,

v.

COMMONWEALTH OF KENTUCKY,

Appellee.

CHRONOLOGICAL LIST OF PROCEEDINGS BELOW

March 3, 1970: Complaint and Warrant Issued

March 6, 1970: Trial and Judgment, Fayette Quarterly Court, CECIL DUNN, Trial Commissioner

March 12, 1970: Notice of Appeal from Judgment of Fayette Quarterly Court to Fayette Circuit Court

March 24, 1970: Appeal Perfected

April 24, 1970: Trial and Judgment, Fayette Circuit Court, N. MITCHELL MEADE, Judge

September 8, 1970: Appellant filed Notice of Appeal to Kentucky Court of Appeals

September 10, 1970: Appellant filed 1 volume transcript of record containing certified copy of Judgment and Notice of Appeal

November 9, 1970: Appellant filed Statement of Appeal, $25.00 filing fee, 1 volume transcript record and 2 volumes evidence and Notice and Motion for Appeal

December 16, 1970: Appellant filed briefs and Notice.

March 25, 1971: Appellee filed briefs and notice

March 26, 1971: Submitted

May 21, 1971: Affirmed (Comm. CULLEN)

June 22, 1971: Mandate Issued

June 30, 1971: Appellant filed Notice to Appeal to the Supreme Court

June 30, 1971: Appellant filed Notice and Motion for Stay of Execution and Enforcement of Mandate (exhibits attached) Sustained 7-13-71

COMPLAINT AND WARRANT

COUNTY OF FAYETTE
QUARTERLY COURT

COMMONWEALTH OF KENTUCKY

v.

LOUIS COLTON, Defendant

Affiant and Complainant, Kenneth Harlow; Address, State Police Headquarters, Richmond; Telephone No., _____; says that on the 3rd day of March, 1970, in Fayette County, Kentucky, the above named defendant Louis Colton Unlawfully committed the offense of disorderly conduct.

/s/ Tpr. Kenneth Harlow
Affiant

Sworn to before me in Fayette County, Kentucky, this 3rd day of March, 1970.

/s/ A. Norrie Wake
Judge, Fayette Quarterly Court

TO ALL PEACE OFFICERS IN THE COMMONWEALTH OF KENTUCKY:

You are hereby commanded to arrest Louis Colten and bring said defendant before the Judge of the Fayette Quarterly Court to answer a complaint made by Kenneth Harlow charging said defendant with committing the offense of disorderly conduct. Issued at Lexington, Fayette County, Kentucky, on the 3rd day of March, 1970.

/s/ A. Norrie Wake
Judge, Fayette Quarterly Court

FAYETTE QUARTERLY COURT
Criminal Division
March 13, 1970

ORDER

This case set for trial, same called, the Court being fully advised and ordered the defendant fined ten ($10.00) Dollars and costs.

Cecil Dunn

Trial Commissioner, Fayette Quarterly Court
Criminal Division

Robert F. Stephens

Judge, Fayette County

ATTEST:

Clerk, Fayette Quarterly Court
Criminal Division

App. 4

TRANSCRIPT OF EVIDENCE
AND PROCEEDINGS

(VOLUME I)

April 24, 1970

JOHN R. MILLER
DIRECT EXAMINATION

* * * * *

BY MR. MOLONEY:

[5] Q. You are a State Policeman? A. Yes, sir.

Q. Trooper Miller, were you so employed on March 3, 1970? A. Yes, sir, I was.

Q. On that particular day to what duties had you been assigned by your superiors? A. On this day I was assigned the special detail at the Blue Grass Airport. This was the day the First Lady, Mrs. Nixon, was to visit Lexington, and my special assignment was to patrol the Airport Road from U.S. 60 up to the front of the terminal building to assist the motorcade in leaving the Airport Road onto U.S. 60, to assist the motorcade when they returned, crossing U.S. 60 onto the Airport Road and to prevent any parking on either side of the Airport Road and also on Highway 60 in front of the immediate area and not to allow anyone to walk across from U.S. 60 over to the airport.

Q. Trooper Miller, when you refer to the Airport Road you are referring to that access road which runs between U.S. 60 or the Versailles Road and the airport terminal itself? A. Yes, sir. This is the entrance to the airport.

Q. All right, sir. Did you on that occasion while in the performance of your duties have an opportunity to meet or become involved with the defendant in this case, Lewis Colten? [6] A. Yes, sir.

Q. Would you relate to the Court what occurred leading up to that and what occurred at the time of the involvement? A. Yes, sir. I had been assigned to this most of the day; however, as the motorcade consisting of Mrs. Nixon and party came back to the airport, I was blocking

the traffic coming from Versailles to Lexington and directing the motorcade itself to go ahead and enter the access road. After completing this assignment, the motorcade had already come in, I again got back in my police car to resume the patrol assignment. As I did so, I noticed a red Volkswagen, '63 model, two door, turn into the Airport Road immediately in front of me. This vehicle had expired Kentucky registration plates, 278-016. I stopped the automobile and found the driver to be Norbert Joseph McGuire, Jr., and I issued him a citation for expired registration plates, and I also examined his inspection sticker on the windshield and found that also to be expired, so I gave him two citations—one for expired registration plates and one for expired inspection sticker.

While I was busy writing this ticket, I noticed another car come by and pass me and go on into the parking area. This car bore an expired Louisiana license plate. At that moment I was busy writing the citations for McGuire and I was unable to stop that one. As I [7] finished—the McGuire citations were issued at 1475 hours.

Q. That would be 2:35? A. 2:35, yes, sir. After finishing and returning to normal patrol in this area, some of the crowd began to leave the airport area, and I noticed the same automobile, this is a '63 Valiant convertible, pull out of the parking lot.

Q. This is the one with the Louisiana plates? A. Yes, sir, the ones that I had already noticed were expired. This vehicle pulled out of the parking lot and back onto the road and I stopped this car and found it to be Guy M. Mendez III, and he told me that he was the owner of the vehicle and had not received his license plates from Louisiana, so I issued him a citation for expired registration plates. As I stopped the vehicle and got out of my vehicle, my police car, and walked up to the side of the Mendez car which was parked directly in front of mine—

Q. Trooper Miller, I notice you kind of looking toward this board; if you could step down here and maybe lay out on this diagram— Your Honor, this diagram was prepared

by the defense and the Commonwealth will stipulate it's similar to the situation at the airport– Now, when you stopped the Mendez car, where did you stop it, sir–using this diagram? A. That diagram doesn't really show U.S. 60.

[8] Q. Well, the Versailles Road is 1,300 feet off to the left of that diagram. I don't think you need to show the exact spot, but just use the roadway and the gravel shoulder to indicate where you stopped them on the road itself. A. This is the Mendez car.

Q. Yes, sir? A. I'm not sure of this. That isn't clear, this diagram– There's a heliopath there.

THE COURT: A what?

A. A heliopath, sir. A superior concrete path for helicopters to land on somewhere in this area here. It's approximately across from that.

Q. You indicate, Trooper Miller, that the Mendez car, which is that red car that you have placed on that magnetic board, is on the gravel shoulder of the road? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. All right, sir. A. It was just barely off the gravel portion.

Q. All right, sir. A. Any my police car–let's use the yellow since it's odd color–was directly in back of it, and as I opened my car door and walked up to this car, the defendants pulled into the back of my police car.

[9] Q. Now, let me ask you, sir, are you sure you were out of your car and approaching the car driven by one Guy Mendez when the car driven by the defendant, Lewis Colten, pulled in behind your cruiser? A. Yes, sir. I was here in the roadway talking to Mendez when Mr. Colten got out of his car and walked up the road.

Q. All right, sir. What occurred? A. Well, another car came along and parked here, and at this time we were standing in this area here. The defendant came up and wanted to know why I had stopped this automobile, and I explained to him that the vehicle had expired registration plates and that I intended to give him a citation, and he

insisted on questioning me as to why I was stopping him, and became quite obnoxious. I asked him to go back to his car and clear the area and he did not. He stayed in the area and kept trying to get a conversation going.

Q. Trooper Miller, I ask you, sir, when you use the word, "clear the area," did you ask the defendant, Lewis Colten to leave the area where you were citing Guy Mendez? A. Yes, sir. I didn't know it was Colten at that time. I didn't ask him his name.

Q. An individual who you can now identify as Lewis Colten, the defendant? [10] A. Yes, sir.

Q. When you asked him to leave the area did he do so? A. No, sir, he did not.

Q. What action did you then take? A. I asked Mr. Mendez to come back to my car and have a seat in the right front, and Mr. Colten was interfering with me giving him a citation, so I sat back in my police car on the driver's side and closed the door and rolled up the glass. This left the defendant standing out in the roadway, and I went ahead with the procedure of the citation.

THE COURT: I didn't hear that last part.

Q. Sir, I said that after asking him to leave and he didn't, I asked Mr. Mendez, to whom I was going to issue a citation, to have a seat in my automobile, and then I too sat down in the car and closed the door and rolled up the glass so I could talk to Mr. Mendez without being bothered by Mr. Colten.

THE COURT: All right.

Q. Trooper Miller, at the time you were citing Mr. Mendez, was Mr. Colten alone? A. No, sir. There were other people in the Mendez car. They got out of the one automobile. There were other people in Mr. Colten's car, and there were other [11] people in the unidentified car up front, and these folks came back and there were several of them there. I don't know the number, possibly 12 or 13.

Q. Where were they with respect to the Mendez car? A. They were some of them on this side and—

Q. By "this side" you mean the grass side of the road? A. Yes, some over here and some standing in between my police car and the Mendez car and some in the highway.

Q. Some in the highway? A. Yes, sir.

Q. Do you have an estimate of how many individuals were in the highway? A. Five or six. Maybe seven.

Q. All right, sir. I want to go back to when did you first see the Mendez car pull onto the airport access road going toward U.S. 60. You understand my question? A. Not exactly.

Q. When did you first see the Mendez car getting ready to leave the airport? A. My area of patrol was from U.S. 60 up to the driveway entrance to the airport, and I drove by the parking lot where Mr. Mendez' car had been parked, and I turned around and came back down toward in the direction of U.S. 60. At this time I was only patrolling that short [12] section of the road, and as I came back I noticed Mr. Mendez' car pull back out of the parking lot in this area of the heliopath onto the highway, and the car was immediately in front of me and I recognized it as being the same car I had seen earlier with the expired plates.

Q. When you say it was immediately in front of you, do you recall whether or not there was an automobile between your car and the car driven by Guy Mendez when he first pulled on the access road? A. No, sir, I don't recall. However, the traffic was beginning to be very heavy at this time. Whatever happened at the airport was breaking up and the cars were attempting to get out of the parking lot and back onto the highway and traffic was heavy.

Q. But he was immediately in front of you? A. This particular car was the one I noticed and was trying to stop, and I don't stop him until he is immediately in front of me.

Q. Do you recall whether or not you had your flasher or siren on? A. Not the siren. The blue light, the blue flasher light.

Q. You did have your blue flasher on? A. Yes, sir.

Q. All right, sir. Do you recall, sir, how fast you would have been traveling at the time you pulled [13] the

Mendez car over, shortly before you pulled the Mendez car over?, A. No, but very slowly. The traffic was heavy at this time. It was moving rather slowly. Estimate of 15 miles an hour, maybe.

MR. MOLONEY: I think that's all.

CROSS EXAMINATION

BY MR. GOLDMAN:

Q. Trooper Miller, when you recited your duties for that day you appear to be reading from a paper. Is that paper your own notes? A. No, sir. These are the white court copies of the citations that I gave to Mr. Mendez and Mr. McGuire. These are part of the court files down in quarterly court. This is a citation I issued.

Q. And they recite your duties for the day? A. I didn't know any of these folks and I have the name of Mr. Mendez–

Q. I don't think you understand my question–

THE COURT: I think maybe everybody not talk at one time and make it easier for the court reporter to get it down. Let's have one person talking at a time. His question to you, Trooper Miller, are you reciting from memory as to your activities that day or your duties that day, or are you using the notes that you have in front of you to help you recall that?

A. I tried to explain to him, Your Honor, these are not notes. These are simply court copies of the citations I issued Mr. Mendez and Mr. McGuire. I did not know any of the Mendez, McGuire or the defendant, and I needed these to recall the names.

THE COURT: All right.

Q. Let me try to restate the question. You referred to your assignment as a special detail on that day and then recited to the Court a number of responsibilities that you had, and in the course of making that recitation as to what your duties were you appeared to be reading from something. A. No, I just answered you I was not reading from something.

Q. You were speaking from memory at that time, Trooper? A. Yes, sir. The only notes I have here are the court copies of the tickets I issued to the two gentlemen.

Q. With respect to the orders that were issued to you, Trooper Miller, concerning your duties on March 3rd, how were those orders issued to you? [15] A. They were given to me verbally.

Q. And who gave you those orders, sir? A. We have a regular chain of command. These are passed down through the headquarters, through our captain and whoever might be assigned to the particular detail, and at this particular time it was Capt. Mays.

Q. Did Capt. Mays give you any kind of briefing concerning the possible presence of demonstrators that day?

MR. MOLONEY: Your Honor, I think the best manner to bring this matter out is to ask Capt. Mays whether or not he gave any type of briefing. Capt. Mays will be a witness in this case.

THE COURT: Overruled, although I wonder about the relevancy to this particular incident.

MR. GOLDMAN: I'll withdraw the question and await for Capt. Mays, Your Honor, and perhaps at that time we might have to approach the Bench on the relevancy.

Q. You describe the defendant as becoming obnoxious, Trooper Miller. What did the defendant do that causes you to use that description? A. Well, I had stopped Guy Mendez to issue a [16] citation for no registration plates. This is not an arrest. It's a very simple procedure. I explained this to the defendant, and he evidently just wanted to cause trouble because he didn't leave at that time. Mr. Mendez was not arrested and was not going to be detained except for a few minutes.

Q. Do I understand you then to be saying that he was obnoxious because he did not leave after you told him it was not an arrest? A. He was obnoxious to me, yes, sir.

Q. You say he was obnoxious to you? A. Yes, sir.

Q. Do you mean in your judgment? A. No, sir, not judgment. He was interfering with my duties.

Q. Did you at any time arrest Mr. Colten? A. No, sir.

Q. Where do you normally stand, Trooper Miller, when you write a citation after pulling a car onto a shoulder?

MR. MOLONEY: Your Honor, I think the proper form of the question would be where was he standing in this circumstance.

THE COURT: You're right.

MR. GOLDMAN: Your Honor, [17] this is cross examination. I'm trying to establish whether these circumstances were any way unusual.

THE COURT: You can ask him if he stood in a different location on this occasion than he normally does.

MR. GOLDMAN: All right, Your Honor.

Q. The question is did you stand in any different location on this occasion than you normally do? A. No, not at the beginning. I usually always walk up to the car and identify the driver and obtain his driver's license. As I earlier testified, I did have to go back to my car in order to avoid Mr. Colten.

Q. You stated in your testimony that the traffic was heavy, proceeding about 15 miles an hour. A. I said not more than that.

Q. At approximately not more than 15 miles an hour. A. Yes.

Q. And you also stated, sir, that you at least initially were standing in the road with Mr. Colten. Where was the traffic at this time? Was there any danger to you? A. It was dangerous to everyone in the road, and again I think you misunderstood. I was standing in the road with Mr. Mendez. I had no business with Mr. Colten. He [18] came up on his own.

Q. You are correct. I meant to say Mr. Mendez, Trooper Miller, but you did stand in the road with Mr. Mendez for a brief period of time. A. Yes, sir.

Q. Were you at that time in any fear of being run over by a car? A. I'm always in fear of that.

Q. Did this give you any cause to desire to continue your conversation with Mr. Mendez or your inquiry with

Mr. Mendez off of the road? A. The normal procedure is you walk up to the car and obtain the driver's license, and then I usually go back to my car to get off the road and write the ticket and then again take it back to the driver. As I earlier stated, in this particular case I had to have Mr. Mendez come back to my car with me.

Q. You also stated, Trooper Miller, that there were some other people who arrived, other than Mr. Colten, and that some of them were in the highway. A. Yes, sir.

Q. But you also say that there was heavy vehicular traffic in the highway. A. Yes, sir. What's your question?

Q. Well, I want to know if you stand firm on both of those facts, Trooper Miller. Do you wish to revise either [19] of those statements? A. Would you repeat that, please?

Q. Well, you have made two statements—one to the effect that there were people in the highway, the other to the effect that there was heavy traffic proceeding at no more than 15 miles per hour. I wish to check as to whether you want to revise either of these statements. A. No, sir.

Q. Did you cite any of the persons who were in the highway for any violation? A. No, sir.

Q. Subsequent to rolling up the window of your patrol car after you entered the patrol car, did you have any further conversation with Mr. Colten? A. No, sir.

Q. Did you at any subsequent time get out of your patrol car during the course of this incident? A. After I wrote the citation to Mr. Mendez, I got out of my car, yes, sir.

Q. And where did you proceed, Trooper Miller? When you got out of the car? A. Well, Mr. Mendez, I had finished with writing him a ticket and allowed him to get out of the car, and I got out of the car and attempted to move the traffic on down the road that had jammed up because of the obstruction there.

[20] Q. Did you at this time see Mr. Colten anywhere? A. Mr. Colten was never out of my sight during this period of time.

Q. He was never out of your sight? A. No, sir. At all times he stood there in the highway or directly in front of my police car in the immediate area. He never left the area at all.

Q. He never left the area immediately in front of your police car? A. No, sir, not until he was arrested.

Q. Now, when you say in front of the police car, Trooper Miller, could you please approach the board and show us just where it is you are referring to? A. Yes, sir. This would be my police car here. He originally came out of his car back up to this area here where he was talking to me, trying to find out why I was stopping Mr. Mendez. After I got Mr. Mendez in my car and I'm in my car, the defendant remained in this area here at all times, except on one occasion he did come back between here, but he was in this immediate area in the highway or just in front of my car at all times.

Q. You can resume your seat. Did you observe any change in the traffic pattern during this time, Trooper Miller? A. Yes.

Q. What was the nature of that change, sir? [21] A. After these folks came into the road and blocked it up, additional police cars arrived at the scene, and there was approximately three police cars and they stopped there in order to clear the highway.

Q. Did one of those police cars pull up approximately broadside with yours? A. There was one approximately broadside with the Mendez car, and then there was another car somewhere in behind it, not exactly broadside but just to the rear of it.

Q. Alongside your but somewhat to the rear of your? A. Yes, sir.

Q. And which traffic lane would that have been parked in, sir? A. This was in the lane that was blocked by the people.

Q. The right hand lane? A. Yes, sir.

THE COURT: Is that the right hand lane leading to the airport or U.S. 60?

A. Toward U.S. 60.

THE COURT: All right.

Q. During this time that you were sitting in the patrol car, what were you doing, sir? [22] A. I was writing a ticket for Mr. Mendez for expired registration plates.

Q. And approximately how many questions or pieces of information must you fill in on that citation in order to do that, sir? A. Oh, just estimates, somewhere around 25, approximately 25 or so squares or blanks to fill in.

Q. And some of this information did you have to elicit from Mr. Mendez? A. Yes, sir, as to ownership of the car, his address, his date of birth and etcetera.

Q. Did you have to look at any documents in the course of being able to complete this citation? A. Yes, sir, his driver's license.

Q. What is your best estimate as to the portion of that time you had available to actually see Mr. Colten? A. During all of that time.

Q. You were writing and talking to Mr. Mendez and inspecting documents and at the same time watching Mr. Colten? A. Yes, sir.

MR. GOLDMAN: That's all, Your Honor.

[23] JAMES MAYES
DIRECT EXAMINATION

BY MR. MOLONEY:

Q. State your name, please, sir? A. James Mayes.

Q. By whom are you employed, sir? A. Kentucky State Police.

Q. You want to speak up a little bit? In what capacity? A. I'm a captain police officer, troop commander, stationed in Frankfort.

Q. Capt. Mayes, were you employed by the Kentucky State Police on March 3, 1970? A. Yes, sir.

Q. Were you employed in the capacity of troop commander of Frankfort Post? A. Yes, sir.

Q. Does the capacity involve the command of troops in Fayette County? A. Yes.

Q. Capt. Mayes, did you have any special duties on March 3, 1970? A. Yes, I did.

Q. Would you relate to the Court what they were? A. There was the assignment of police personnel to the security and traffic control in and around the airport.

[24] Q. In what connection, sir? A. In connection with Mrs. Nixon's visit.

Q. Capt. Mayes, did you receive any instructions as to what duties your men were to perform that day? A. Yes.

Q. From whom did you receive it? A. From my commander, field commander, Major Powels, Frankfort, verbal instruction.

Q. Oral instruction? A. Yes.

Q. Captain, did you also in connection with Mrs. Nixon's visit to Lexington receive a briefing from anybody concerning that visit? A. Yes.

Q. From whom did you receive that briefing? A. The security, Secret Service with the White House.

Q. Was this an oral briefing or a written briefing? A. It was an oral briefing.

Q. Do you recall, sir, whether or not— Strike that question. Captain, did part of the briefing involve the possible or the possibiliy of a demonstration at the airport? A. Yes.

Q. Were any specific instructions given to you regarding your duties in the event of such a demonstration? [25] Your best memory? A. I don't— No, sir, I don't remember getting any other than just what we normally have.

Q. In the manner of crowd control? A. Yes.

Q. Do you recall, sir, whether or not you passed on to the officers under you any specific instructions as to what they should do in the event of a demonstration? A. In the event of a demonstration?

Q. Yes, sir. A. There was no formal briefing of this nature. I don't remember of any.

Q. You don't recall passing that on—? A. It was very brief. The discussion about the matter was very brief and casual and to the extent of seeing that the officer was at a

particular time and maintained the peace and order, and that was about the extent of it.

Q. Captain, do you know from your memory what the duties of Trooper John Miller were on March 3rd? A. Yes.

Q. What were they? A. To work the traffic on the Airport Road, to regulate the traffic there and permit no parking on that road, and to see that the traffic moved freely in both directions.

[26] Q. All right, sir. Did you have occasion, sir, to see Trooper John Miller and the defendant, Lewis Colten, that day? A. Yes, I did.

Q. Would you relate to the Court the circumstances surrounding that? A. My first observation of the two people together in the same area was when I pulled out of the drive there at the airport and pulled on to the access road heading toward 60. I saw a group of people, some 15, 16 people, standing in the roadway, alongside three or four parked vehicles, which the vehicles were headed toward 60, and on the right side of the road, and as I approached and got closer to this particular crowd, Mr. Colten was in this crowd in the roadway, and Lt. Moberly was driving the car I was riding in and he stopped just short of getting even with the trooper's car and just back of this group of people who were standing there.

Q. Why did you stop at that particular place, sir? A. Well, the road was blocked there, people in the road, and so to determine what was going on, I got out and walked over to the trooper's car and spoke to Trooper Miller and made an inquiry as to what was going on, and of course, he told me that he had a person there in the car with him.

Q. He was in his cruiser? [27] A. Yes, and he told me that there was some traffic regulation he was checking on and had this particular person in the car, and I asked him about the crowd there. He said, "They've been asked to leave, I don't have them stopped," or something to that effect. I said, "Well, I just wanted to find out," and then I returned back and started talking to the crowd there and telling them to get in their car and to leave.

Q. Did you specifically see Mr. Colten there at that time? A. After this had occurred, going on up to Trooper Miller's car— No, I don't know where he was in the crowd at that particular time. No. Most of the crowd at that time was still out in the roadway.

Q. Yes, sir? A. There was some, well, around our car, and some scattered maybe in back of his car.

Q. You're referring to Trooper Miller's? A. Yes, and I can't place Mr. Colten until something else happened after that, until after he was arrested.

Q. Did you ask the crowd to leave, sir? A. Yes.

Q. Did they do so? A. They didn't at first, no.

Q. Do you ever remember seeing Mr. Colten and [28] asking him to leave? A. Personally and directly, no, I don't no.

Q. Do you know whether or not he was in this crowd? A. He was in the crowd when I pulled up there because I remember seeing him.

Q. Did you ever see him leave that crowd? A. No, I didn't see him leave the crowd.

Q. Do you recall from your memory how many times you asked the individuals there to leave? A. I asked the crowd about four times—four or five times to leave.

Q. Then what action did you take, sir? A. I started walking forward past the trooper's car because there was some individuals on down in front of this area in another car, in that direction, and of course, about this time some other officers got there and they were working in back of me there and I was working in front.

Q. What was your aim by going on down the road? A. To work with this crowd. Actually, there was some four or five people there, and stay with them until they got in their car.

Q. I see. Otherwise, to get the cars on out of there and get the traffic moving? A. Yes. That was the objective, yes.

MR. MOLONEY: That's all.

CROSS EXAMINATION

BY MRS. WILSON:

Q. Capt. Mayes, at the point at which you entered the Airport Road and first saw Trooper Miller and Mr. Colten standing together, how far away from Mr. Colten and Trooper Miller were you? A. Well, you're making a connection here of Trooper Miller and Mr. Colten as being isolated to themselves. I don't remember seeing this myself. I remember seeing Mr. Colten in the group of these people here when I pulled up there and stopped or the car was stopped, and that's the only observation I remember of seeing.

Q. Do I understand you to testify that as you turned out of the Airport access road—? A. That's when I first noticed the crowd, the group of people, yes.

Q. But you didn't specifically at that point see Mr. Colten? A. No. I wouldn't have recognized him from that distance anyway. I couldn't have.

Q. When you pulled up and stopped just slightly to the rear of Trooper Miller's car, I presume you stopped in the roadway? A. Yes, I did.

Q. In the right hand lane? A. Yes.

Q. In such a way that you were obstructing traffic [30] behind you? A. Well, it was the only logical place to stop the vehicle at the time because the road was congested and needed some attention.

Q. Was there a car in front of you? A. No.

Q. Were you the only policeman on the scene other than Trooper Miller? A. On first arrival. Police car?

Q. Yes? Was there—? A. We were the first ones, yes.

Q. There was not another police car in front—? A. I don't remember seeing one.

Q. Was there any other officer in the car with you? A. There was another officer driving the car. I was a passenger.

Q. What was his name? A. Lt. Moberly.

Q. If I understand you correctly then, aside from Trooper Miller you were the first police officer on the scene? A. Yes.

Q. You got out of your car on the driver's side? A. Whose driver's side?

Q. Oh, you weren't driving. I beg your pardon. You got out of the car on the inside of the—? [31] A. I got out of our car that I was riding in on the right side. I was a passenger in the front seat, and walked up to Trooper Miller's car on his side of the car, on the driver's side.

Q. Trooper Miller was sitting in his car at the time? A. He was sitting in his police car.

Q. Was the window in his automobile up or down? A. It was down when I talked to him.

Q. I beg your pardon? A. It was down. The window was down.

Q. The window was down? A. Are you speaking of the window there next to Trooper Miller?

Q. Next to Trooper Miller, on the driver's side. A. Yes, it was down.

Q. The window was open? A. Yes.

Q. You spoke to Trooper Miller and then turned around and began asking the crowd to disperse, is that correct? A. Yes.

Q. From that time on until a later incident you were not able to place Mr. Colten in the crowd? A. That's correct.

Q. You yourself did not speak to Mr. Colten? [32] A. I spoke to the crowd there.

Q. Did you at any time speak directly to Mr. Colten? A. Not to my memory, no.

Q. By the time you began to speak to the crowd had other policemen begun to arrive? A. I don't think so. When I first asked the crowd to leave, get in their cars and leave, it was just a moment, just a moment, the best of my memory, that the other police car pulled in back of our car which was stopped there, and—

Q. Who was driving that second car? A. I don't remember.

Q. Do you remember who was in it? A. I believe it was Trooper Harlowe and another officer, and this all hap-

pened in a matter of short sequence here, that my attention wasn't directed toward the police momentarily from that stage on, I mean what was happening kind of back of me, where I had my back turned, and I remember seeing some four or five officers that arrived there just shortly after myself and Lt. Moberly.

Q. Did you see Trooper Harlowe get out of his car? A. No, I don't remember seeing him get out of his car. No, I don't.

Q. If you didn't speak to Mr. Colten, I presume that you did not place him under arrest? [33] A. I did not place him under arrest, no.

Q. Capt. Mayes, can you approximate for us the length of time between the time that you turned out of the Airport access road onto the road to Route 60 and the time that you stopped? A. Are you asking can I determine the amount of time it took to travel from the distance of turning onto the Airport Road until the time we stopped?

Q. Right? A. Be less than a minute.

Q. Approximately how far is it, Capt. Mayes, can you estimate that? A. 250 to 300 yards.

Q. Approximately how long a period elapsed between the time you pulled up and got out of the automobile during which you spoke to Trooper Miller and then began advising the crowd to disperse? A. A very short time—a minute, less than a minute.

Q. During that period of one minute what had happened to the traffic in back of you? A. Vehicular traffic?

Q. Yes, sir. A. At the time that I was speaking to Trooper Miller? I don't recall actually turning around. Lt. Moberly, his attention was drawn to the traffic and [34] the crowd, and he started working with the traffic then. I started talking with the group then. I don't recall actually how many vehicles were stopped up that a way. I don't really know.

Q. Do you know whether there were in fact any vehicles stopped? A. No. No, I don't.

Q. Did you pass any vehicles as you drove on down from the point—? A. No, it was clear.

Q. —which you turned off to the access road? A. There were no vehicles between the point where I first noticed the crowd until we stopped.

Q. The road was clear up to the point where the crowd was in the road? A. Going in our direction. Now, I don't actually remember meeting anyone at that particular time because it was such a short time.

MRS. WILSON: That's all.

T. H. BROWN
DIRECT EXAMINATION

BY Mr. MOLONEY:

Q. Would you state your name, please, sir? A. T. H. Brown.

[35] Q. By whom are you employed? A. Kentucky State Police.

Q. In what capacity? A. Trooper.

Q. Trooper Brown, on March 3, 1970, were you so employed? A. Yes, sir.

Q. On that day what were your duties? A. Assigned to a detail here in Lexington in regard to Mrs. Nixon being in Lexington.

Q. What specifically were your duties with this detail? A. Just to security around the airport, specific assignments to keep certain people from certain areas and let press in and things like that. Just general duties involving such a detail as this.

Q. You made reference to certain people from certain areas. What does this refer to? A. There was an area roped off at the back of the airport and I was stationed at a specific point to keep people from coming into this area.

Q. Just the general public? A. The general public. There was a place for the general public but they had to enter through a specific point.

Q. I see. Then your duties were at the airport building itself? [36] A. Yes, I was out on the apron out behind the airport.

Q. All right, sir. When you say out behind the airport, you are referring to that part of the airport where planes come in and land? A. Where the passengers load and unload.

Q. All right, sir, did you have occasion on March 3rd to see the defendant, Lewis Colten? A. Yes, sir.

Q. Do you recall when this was? A. Well, the first time I remember of specifically talking to him was at about the time the plane was ready to leave.

Q. Well, I think we can skip what happened at that point. Did you have occasion to see him on the Airport Road? A. Yes, sir.

Q. The access road to the airport? A. Yes, sir.

Q. Was this after the plane left? A. After the plane had left.

Q. Had your duties ended at the airport building itself? A. That's right. I was leaving too.

Q. Were you driving an automobile? A. Yes, sir.

Q. Were you alone? [37] A. No, sir.

Q. Who was with you? A. Trooper Kenneth Harlowe.

Q. Where were you all going, if you recall? A. We were going back to our homes.

Q. And where would that be? A. Harroldsburg and Danville.

Q. You live in Danville? A. Yes, sir.

Q. Now, where did you have occasion to see this defendant at that time? A. He was, the first time I saw him, he was standing beside Trooper John Miller's car.

Q. Was this on the access road, sir? A. Yes, sir.

Q. Do you recall whether or not he was standing on the traveled portion of the road or on the shoulder of the road? A. When I first saw him, he was standing on the traveled portion beside Trooper Miller's car on the driver's side.

Q. All right, sir. Would you relate what happened? A. I was immediately behind Capt. Mayes and Lt. Moberly. Their car was stopped in the road, and I pulled up within six or eight feet and stopped behind their car and got out.

[38] Q. Were they out of their vehicles when you pulled up? A. Yes, sir.

Q. Do you know where they were when you pulled up? A. Capt. Mayes was near Trooper Miller's car, and there was several people gathered around in the road in front of Capt. Mayes' car, ten or 15 people, and there was a discussion going on, so I stopped to get out to see what the discussion was about.

Q. All right, sir, and what took place? A. Shortly after I got out, Trooper Harlowe got out on the right side of the car, we walked up to where this group was gathered, and I heard Capt. Mayes tell the people there to move on, to get back into their cars and move on. Then, of course, after he had made this statement, then it was our duty to assist him to see that the people did carry out these orders, and we in turn told various individuals standing around to move on, to get back in their cars. I didn't know at the time what the reason for the stopping was in the beginning, but I did go ahead with my duty, telling the people to get back in the cars and to move on down the road.

Q. When you say you told them to move on, do you recall the exact words you used? A. Well, when I would walk up to various individuals standing around, I'd say, "Now, this is none [39] of your affair, what's going on here, get back in your car and please move on and clear the road."

Q. Do you recall speaking specifically to any individuals that day? A. Two in particularly.

Q. Was one of those two individuals the defendant, Lewis Colten? A. One of them was.

Q. Did you specifically say to him what you just related to the Court?

THE COURT: When you say "that day," that day was a long day.

MR. MOLONEY: Well, Your Honor, excuse me.

Q. Did you specifically relate to Lewis Colten on the Airport Road after you pulled up there behind Capt. Mayes' car that the business going on was none of his affair and

that he was to get in his car and leave? A. I told him twice.

Q. Twice? A. Twice.

Q. Do you recall where he was when you told him to leave? A. Once he was standing behind the car, and the second time he had come back by Trooper Miller's car and [40] was going in between them.

Q. In between Trooper Miller's car and whose car? A. And Colten's car.

Q. That's the car behind Trooper Miller's? A. The car behind Trooper Miller's.

Q. Was he in the roadway or on the shoulder? A. The first time that I told him to get back in his car, I walked up to him and he started back that way. Then he went, instead of getting in on his side, he went between the cars.

Q. Was this in the roadway, though, is what I'm concerned with. A. Well, he was on the traveled portion—the cars were off on the shoulder—the first time I told him, and the second time I said, "Get in your car," and he went between the cars instead.

MR. MOLONEY: All right, sir. I think that's all.

CROSS EXAMINATION

BY MR. GOLDMAN:

Q. Do I understand, Trooper Brown, that you were driving the vehicle that you and Trooper Harlowe were in? A. Yes, sir.

Q. Is this a private vehicle or is it a state vehicle? A. State police marked car.

[41] Q. When you say "marked," in what way is it marked? A. It has the blue light on the top and the insignias on the doors and so forth. It's not a plain car or anything.

Q. I'm sorry, I didn't hear you. A. It's not a plain car, an unmarked car. It has the blue light on top and the insignias on the doors.

Q. When you first approached the scene where you saw this crowd, approximately how long did it take you to get

to that area from the time you left the parking field area of the airport? A. I'd say approximately a minute, something like that, from the time— We were up near the Bohmer Flying Service, parked not in the parking area, we did not have to wait in line or anything, we just pulled directly from our parking lot out on the access road, and I'd say something like a minute.

Q. Approximately how fast did you travel, if you recall? A. Well, the traffic was fiarly heavy, and the distance that I traveled wouldn't have been more than a city block from the time that I started the car until I was stopped again. Fifteen or 20 miles an hour would have been the maximum speed that I reached.

[42] Q. Did you pass any cars in the process of getting to where Capt. Mayes' car was? A. No. Capt. Mayes pulled out ahead of me, and I just followed in behind.

Q. You were traveling directly behind Capt. Mayes during this period? A. I was the next car behind.

Q. Do you recall whether there was any traffic blocked up behind your vehicle when you stopped? A. The next car behind me, I think was another police car, two other officers.

Q. Am I correct in assuming that you approached the scene of this incident on the right hand side of the road, that is the usual lane? A. In that lane of traffic, yes.

Q. Do you recall whether there was any traffic coming in the other direction? A. Yes, there was.

Q. When you were serving back, doing your duties back at the airport terminal, was Trooper Harlowe serving beside you?

MR. MOLONEY: Your Honor, I don't think this is really material to the arrest on Airport Road, is it?

THE COURT: What was your question again?

[43] MR. GOLDMAN: I am asking, Your Honor, whether Trooper Harlowe served next to Trooper Brown back at the airport.

THE COURT: I'll let you ask it, but I don't know that it is relevant.

MR. GOLDMAN: I assure the Court that we have our reasons.

THE COURT: I said I'll let you ask it.

A. We had different assignments, and as the day progressed we shifted, you know, from the different ranges from the back of the room up close together and things like that, according to what was going on, but we were in the same general area, yes.

Q. At the time you stated that you saw Mr. Colten at the terminal, at that time was Trooper Harlowe serving next to you or near you? A. We were together at that time.

Q. You were together at that time. Did you and Trooper Harlowe have any conversations concerning Mr. Colten—?

MR. MOLONEY: Object, Your Honor.

Q. —from that time until the time that you reached—until the time you pulled up behind Capt. Mayes' [44] car?

MR. MOLONEY: Your Honor, I really don't see the relevancy of that. It's obvious what counsel is trying to infer, but I don't think it is relevant to whether or not this individual was guilty of disorderly conduct that afternoon on the Airport Road.

THE COURT: Overruled.

Q. Do you want me to restate the question, sir, or do you remember? A. I remember the question. We had no conversation from the time we first talked to Mr. Colten at the airport until we arrived behind Capt. Mayes' car, we had no discussion concerning this gentleman.

Q. Did you arrest Mr. Colten? A. No, sir.

Q. And you state when you arrived at the scene of the incident, Capt. Mayes was telling people to move on? A. Yes, sir.

Q. Did he ask them to get back into their vehicles? A. Yes, sir.

Q. Did he instruct anyone to move off the highway? A. There was a couple of cars down 50 to 75 feet [45] from where Trooper Miller's car— I never did go past Trooper Miller's car toward the main road. I stayed in that

area from his car back in the direction from which I had come. There was two or three cars on farther down the road which would be 50 or 60 feet away, and the captain went on down to the front vehicle, trying to get the front to move out so that the rest of them could follow. I assume that's what he was doing down in that area.

Q. Did he tell any individuals who were standing about to move onto the shoulder or move onto the grass area? A. No. There was no instruction given to move into the grass area. It was to "get into your vehicles and leave."

Q. Were your instructions to the crowd confined to the instructions "move into your vehicle and leave?" A. Yes, sir.

Q. You stated earlier that you entered on the course of conduct of instructing people to get into their cars to leave in order to assist Capt. Mayes? A. Yes, sir.

Q. Was that your only cause in instructing people to get into their cars and leave? A. Well, it was obvious that this was creating a problem there with the traffic and that one portion of the road was blocked and that people would have to get into [46] their cars and leave before we could continue on our way.

Q. Would you please approach the board, Trooper Brown, and— Could you approach the board, please, sir? If we were to assume that the yellow vehicle, if you would please assume that the yellow vehicle is the vehicle in which Trooper Miller was seated, do you recall seeing that vehicle? A. Yes.

Q. Would you show us approximately where you were standing when you first left your car? A. The captain's car was parked about at the rear of Trooper Miller, and I was the next car directly behind him. I got out and walked between these two cars and was in this vicinity.

Q. You walked between your car and Capt. Mayes' car? A. Capt. Mayes' car.

Q. And where did you proceed then, sir? A. Up beside Trooper Miller's car and in front of the captain's car.

Q. Where did you first see Mr. Colten? A. He was standing in this vicinity here, moving about in this vicinity.

Q. Between Capt. Mayes' car and Trooper Miller's car? A. In front of the captain's car. I think the [47] captain's car was parked more or less in the rear. He didn't pull up directly beside.

Q. And did you testify that you then told Mr. Colten to leave? A. He, among others, but I specifically remember him, but I told other people to get into the car—anyone that I came in contact with that didn't belong there, I asked them to get in their car and leave.

Q. Did you ask them or order them, sir? A. Well, just telling them, "Get in your car and leave." You can construe that as asking them or telling them but that's the worlds I used, "Get in your car and leave."

Q. And you testified that you told this to Mr. Colten twice? A. Yes, sir.

Q. Where was Mr. Colten the second time that you said that to him? A. The first time I told him, he started back toward his car. I said, "Get in your car and leave." He started back toward his car, but instead of getting—going to the driver's side, he went between the cars, and I spoke to him again and told him to get in the car and leave, but then Trooper Harlowe stepped in between us and he told him to leave.

[48] Q. Trooper Harlowe took charge of the situation at that point? A. He had come up on the right side. Trooper Harlowe was closer to him; and after I told him to leave, I thought that he was going to his car to leave, but instead he went between us.

Q. And did you stay where you were or did you go somewhere after Trooper Harlowe had stepped between you and Mr. Colten? A. I stayed right in this area, but a girl came up to me and was asking questions and I turned and told her to leave.

Q. Were you able to observe Trooper Harlowe and Mr. Colten after the point that Trooper Harlowe stepped between you and Mr. Colten? A. Yes, sir.

Q. For how long could you observe them? A. Well, I observed that they were having some kind of trouble. Mr.

Colten was slinging his arms and Mr. Harlowe had him by the arm.

Q. Trooper Harlowe had him by the arm? A. By the arm or reached and got him by the elbow or some portion of the arm here.

Q. And did you observe anything further? A. Trooper Harlowe's hat was knocked off and I caught it when it hit the ground and handed it back to [49] him. He turned around and reached and got his hat.

Q. You say it was knocked off. Did it fall off or did someone push it off? A. It came off in this struggle. I don't know who knocked it off. I don't know whether Mr. Harlowe knocked it off or Mr. Colten knocked it off.

Q. Do you know whether it just fell off from movement, would that be another possibility, sir? A. Possibly.

Q. You testified that a young lady, I think it was, was asking you questions at this point. To what extent were you addressing yourself to her and to what extent were you observing what was taking place? A. I was trying to do both at the same time. I didn't want her to get involved in this and I was trying to stay between her and what was going on behind.

Q. Which direction were you facing, sir? A. Both ways. I would look at her and then back here. After I handed Trooper Harlowe his hat, I turned around and addressed myself fully to her.

Q. Did you have to walk away from the young lady in order to hand him the hat or were you closer to him? A. I was close enough to pick up the hat.

Q. Did you see Trooper Harlowe and Mr. Colten proceed toward the area of the fence during this period of time? [50] A. They were proceeding away from that area.

Q. What is the furthest distance from the road that you recall observing seeing them at? A. When he first took hold of him, he was about at the right front fender of this car, between the police car and Mr. Colten's car.

Q. So then you say that your testimony is that all of the conduct took place either in front of Mr. Colten's car

or right alongside his right front fender? A. Well, in front. The side of his right front fender would be over here, but they never did get back there. It all happened in this area here.

Q. You testified before, sir, that when you first ordered Mr. Colten to leave, he proceeded to the place of his car. Did you at that time know that that was his vehicle? A. No, I didn't, but there were other people moving in the direction of different cars, getting in their cars, and I'm certain that this was the car— I don't know whether it had been pointed out to me or whether someone had told him to get in that car or what it was.

Q. When you told Mr. Colten to get back to his car the first time, did he say anything to you? A. He said he wanted to see if these people were going to need a ride. He had some conversation with me about there were other people in the car that Trooper Miller had stopped and he wanted to see that these people had a [51] ride back into town. The car that was sitting here was already full with the exception of the driver.

Q. You say the car was full. Do you recall how many people were in that car? A. There were three people in the back and one or two in the front. There were people in the car.

Q. There were people in the car. Are you certain as to the number? A. No, I'm not certain.

Q. Are you certain as to whether it was filled with the exception of the driver? A. There certainly wasn't room in there to haul all of the people that were in the other car.

Q. What—? I hope I'm not repeating myself, but what made you sure that this was Mr. Colten's car?

THE COURT: I think he's answered that question. Move on.

MR. GOLDMAN: Well, the reason I repeat it, Your Honor, is that it seems now that before the officer indicated he had some lack of certainty and now he seems to indicate that he did understand that to be Mr. Colten's car.

THE COURT: Well, I was thinking I remembered his testimony, [52] he assumed— He said people were moving toward cars and Mr. Colten was heading towards this car. He was not sure whether someone told him or pointed it out or whether he just assumed it. I don't think he can answer any more than that, so let's move along.

MR. GOLDMAN: I'll withdraw the question.

Q. When you say that the car was filled, are you sure that you are recalling the car behind Trooper Miller's car or could it have been the car in front of Trooper Miller's car? A. I'm sure it was the car behind it because I wondered since he had brought the question up, if he was going to see that these people got back into town, where he was going to put them.

Q. Did you question Mr. Colten? A. No. Other than just to tell him to get in his car and leave.

Q. Those were your only words to Mr. Colten? A. Yes, sir.

Q. The second time you told Mr. Colten to get in his car did he say anything to you? A. No. He was going away from me then and not [53] to the driver's side of the car. That's when I told him the second time because I thought maybe he didn't hear me or understand what I said.

Q. Did he look toward you that you can recall? A. The first time he did and made the remark that he wanted to help see if there was anything he could do about getting these people back into town, and then whenever he left from where we were talking and he moved on and went in between the cars and away from the driver's side.

Q. He did not look toward you after the second time you directed him to get into his car? A. No. He was going away from me.

Q. And during all of this time, Mr. Colten, Trooper Harlowe, and yourself were standing either on the road or on the gravel portion? A. I never did leave the paved portion. Mr. Colten left to go between the cars and Trooper Harlowe went behind him and took him by the arm and placed him under arrest.

Q. Did you hear Trooper Harlowe place him under arrest? A. I couldn't tell what the conversation was. There was quite a bit of shouting and quite a bit of confusion going on, and as far as hearing his exact words, I don't know what they were, but I did see him reach and [54] hold of him. They were discussing or talking then about his moving or not moving, and I couldn't remember the conversation.

Q. You couldn't make out the conversation? A. Well, I was having conversation with other people too, and the first thing that attracted my attention was the movement of the bodies and the hat coming off.

Q. And at that time Trooper Harlowe had Mr. Colten's arm? A. Yes, sir.

Q. Do you recall at any time either of them standing on the grass area? A. Well, this would put them in this area here at that time when this was going on, when the hat came off.

Q. Did you ever see them on the grassed area? A. Is this a gravel shoulder here?

Q. Well, sir, I want you to recall to the best of your recollection where the gravel was and where the grass was. A. Well, I'm recalling to the best of my recollection where this occurred was right in front of the right front fender of this car. I don't remember specifically whether the ground was covered with grass or whether it was covered with gravel, but that's where it occurred.

Q. After Trooper Harlowe had Mr. Colten by the arm, did you at any time thereafter assist Trooper Harlowe? [55] A. No.

Q. Where did you go? What did you do, sir? A. I was talking to this young lady.

Q. Did you see Trooper Harlowe bring Mr. Colten to the vehicle in which he was taken from the area? A. They were behind me at the time.

Q. Excuse me, sir, could you explain who you mean by "they"? A. Trooper Harlowe and Mr. Colten, after he started— After I handed him the hat, they they went

behind me in this direction toward the center of the road, and I heard a scuffle and heard Mr. Colten screaming and hollering and making some kind of noise.

Q. Do you recall what he screamed? A. It wasn't intelligible, what he was saying. Just more or less hollering.

Q. Did he scream any words, to the best of your recollection? A. No words that I can remember.

Q. Was it a scream of pain to the best of your recollection? A. Possibly.

Q. Were you facing this scene at any time or was it—? A. Not at that time. Whenever Trooper Harlowe started out from between the cars with Mr. Colten, this girl [56] seemed to want to interfere or get involved, and I was standing there talking to her.

Q. Were there any other police officers around that you can recall at this time? A. Trooper Sayre and Trooper Lovett were in the car immediately behind me, and they were all three behind me.

Q. Do you recall any other police officers there at that time? A. Not at that time.

MR. GOLDMAN: That's all, Your Honor.

KENNETH HARLOWE
DIRECT EXAMINATION

BY MR. MOLONEY:

Q. Would you state your name, please, sir? A. Kenneth Harlowe.

Q. By whom are you employed? A. Commonwealth of Kentucky, State Police.

Q. Were you so employed on March 3, 1970? A. Yes, sir.

Q. Trooper Harlowe, let me ask you, what were your duties on March 3, 1970? A. To assist the Secret Service on security at [57] the airport.

Q. Did you have occasion to see the defendant, Lewis Colten at the airport on that day? A. Yes, sir, I did.

Q. How many times did you see him? A. I seen him on three different occasions.

Q. All right, sir. Was one of those occasions on what is referred to as the Airport Road? A. Yes, sir, that's correct.

Q. Would you relate the circumstances of seeing him there? A. After Mrs. Nixon had left, we were winding up the tour of duty over there that day. As we were leaving—

Q. Who were you with? A. I was with Trooper Brown.

Q. Who was driving? A. Trooper Brown was. As we were leaving, the captain, Capt. Mayes, was directly in front of us, going out the Airport Road. There was one cruiser sitting off the side of the road, over toward the edge of the road on the Airport Road. There was a large—well, not a large—12, 15, 18 people out in the road. The first cruiser, which was driven by Capt. Mayes and Lt. Moberly had to stop for this crowd that was out in the road. We stopped directly behind them.

Q. Go ahead. [58] A. After that the captain got out, as did myself and Trooper Brown, and the captain advised the subjects there to get back in their cars and leave, after he talked with the other trooper. I didn't know who the other trooper was at that time. I later found out it was John R. Miller, found out what the circumstances was. He advised them that no part of what was going on between the trooper and the other subject—

Q. When you say he advised "them," is this the crowd? A. Yes, sir, that was the crowd. Yes. He told them to get back in their cars and leave on several occasions which they did no. Some of them got in their cars, some of them left and some of them got in their cars and sat there but caused no trouble, the ones that got back in their vehicles.

Q. Did you see the defendant, Lewis Colten, in this crowd? A. Yes, sir, I did.

Q. Did you specifically see him individually? A. When I seen him he was over at the edge of the road. He was still on the road. He wasn't out in the middle of the road, he was over at the edge of the road when I seen him.

Q. You want to come around to the board here, Trooper? And let me ask you, assuming that the yellow car [59] is Trooper Miller's car, where was Mr. Colten

when you first saw him? A. When I first saw him, when I first seen him, recognized him, where Capt. Mayes' cruiser—this is the traveled portion, Capt. Mayes stopped here on account of the crowd gathered out here, and I'm not sure by which car they were standing. All I know is out here in the road he had to stop, right here, and we came directly up behind him and the other cruiser, and that's when I seen Mr. Colten in the road.

Q. He was out in the road? A. By which car I couldn't say which car, by which car it was by. There was two or three cars along there, I couldn't say which car he was by at the time, but I know he was out in the road right here.

Q. Tell what you remember as relates to your contact with Mr. Colten? A. Well, I had no conversation with him up there. I heard the captain talking to him up here. I had no conversation with him up here at all. The captain advised him along with the other group to leave, get back in their cars and leave. My only conversation was back here along Trooper Miller's cruiser. He had went back to the cruiser again. That's when I asked him to leave.

Q. Did anybody else ask him to leave? A. Yes, sir. He had been asked to leave. I [60] heard the captain ask him, and that's all I heard ask him was the captain.

Q. All right? A. And he came back here and then I asked him to leave because the captain had already made it clear he was to be on his way, and he said he was going to stay around and see what happened. Those were his words.

Q. What action did you take then, sir? A. I then arrested him.

Q. What did you charge him with? A. Disorderly conduct.

Q. On what basis? A. He refused— In my opinion he was blocking traffic out here to start with, creating a disorder is what it amounted to. I charged him with disorderly conduct.

Q. All right, sir. Trooper, when your car pulled up behind the captain's car, from your memory do you know whether or not there was traffic blocked behind you?

A. There was, I would say, three or four minutes later. One reason, we had to stop in the road due to the crowd. In fact, we had one, Lt. Moberly, directing the traffic around the cruisers at that time, yes.

Q. Around the cruisers? A. Right.

Q. So he was using the inbound lane to get traffic [61] out of the airport? A. Right. Yes, sir.

MR. MOLONEY: That's all.

CROSS EXAMINATION

BY MRS. WILSON:

Q. Trooper Harlowe, you said that you saw Capt. Mayes ask Mr. Colten specifically to leave? A. I heard him, yes, ma'am.

Q. You heard him—? A. Yes, ma'am.

Q. —speak to Mr. Colten? A. Well, more or less. The crowd there, the group that was assembled. I didn't hear him say anybody's name in particular. I heard him say to the crowd. He was talking to the crowd.

Q. You heard him address the crowd? A. Yes.

Q. And you placed Mr. Colten in the crowd? A. Mr. Colten was in the crowd, yes.

Q. Then you yourself spoke to Mr. Colten? A. Yes, ma'am. After he left from where the captain had been talking, then he came back towards the cruiser, the cruiser which was occupied by Trooper John Miller, and that's where I asked him to leave, yes, ma'am.

[62] Q. Where were you at that time in relation to the roadway? A. He came— I was off the roadway at that time.

Q. Were you on the grass? A. Yes, ma'am.

Q. You were on the grass? A. Yes.

Q. Was Mr. Colten on the grass? A. Yes, ma'am.

Q. You were both all of the way across the shoulder and on the grass at the time? A. Well, that's considered part of the shoulder. I mean what I'm getting at, I wasn't on the traveled portion of the road. I can't say there's gravel there and then there's grass. I can't say whether

I was on the gravel or the grass. I wasn't on the traveled portion of the road, though.

Q. Were you on the inside of the cars, between the cars and the back end of the fence row? A. Yes. I was between the car and the fence row, yes, ma'am.

Q. Mr. Colten was on the inside? A. Yes.

Q. So the cars were between you and Mr. Colten and the roadway? A. Well, we were at the corner of the car, yes, [63] it could be said they were between us, yes.

Q. Exactly what did you say to Mr. Colten? A. I asked him was he going to leave, and he said, in his words, he was going to stay around and see what happened.

Q. Did you say, "Are you going to leave?" A. I told him to leave.

Q. You said—? A. I told him to leave, yes, and then I asked him, "Are you going to leave?" He said he was going to stay around and see what happened.

Q. You said, "Will you leave?" A. No, ma'am.

Q. Would you tell me—? A. Okay, I'll tell you—

Q. —me exactly what you said? A. I told him to leave, and he stood there, and I said, "Are you going to leave?" He said, "I'm going to stay around and see what happens. I then placed him under arrest.

Q. Did you address Mr. Colten in any particular way? A. I don't remember. All I remember is asking him to leave or telling him to leave and then placing him under—

Q. Did you say, "Are you going to leave, loudmouth?" [64] A. I don't remember.

Q. Is that a form of address which you might have used? A. No, ma'am, I hardly think so.

Q. You don't use the word "loudmouth?" A. Well, no, ma'am, we don't make that a policy to use something like that.

Q. Are you saying that you did not say "loudmouth?" A. I'm saying I don't remember, ma'am.

Q. You don't remember? A. Right.

Q. But you might have said it? A. It's possible, but I'm saying I don't remember. He was very loud.

Q. Did you say anything to Mr. Colten like, "You've caused enough trouble today?" A. I don't remember. Honestly, I don't. I would tell you if I did.

Q. But you do remember telling him to leave? A. Yes, ma'am, I did.

Q. And you do remember asking him if he was going to leave? A. Yes, ma'am. If he had–

Q. But you don't remember whether or not you addressed him as "loudmouth?" A. If he would have left when I told him, I [65] wouldn't have had no reason to ask him was he going to leave. I wouldn't have placed him under arrest–

Q. And you don't remember–

MR. MOLONEY: Your Honor–

THE COURT: Just a minute. Let him finish his answer because she can't get both the question and the answer at the same time.

A. I told him to leave. Of course, he had already been told, and I said, "Are you going to leave?" He said, "I'm going to stay around and see what happens." I then placed him under arrest.

Q. What did you say when you placed him under arrest? A. I told him he was under arrest, he was going to jail.

Q. You do not remember whether you addressed him as "loudmouth?" A. I–

MR. MOLONEY: Your Honor, I think he has answered that question. I realize that the scope of cross examination is broad, but I think we're getting a little too broad on that question.

THE COURT: Well, I don't [66] want to limit her on cross examination, but let's not go over the same points.

Q. Do you remember–let me ask the question again– Do you remember whether you said anything to the effect that, "You've caused enough trouble today?" A. I don't remember it, no, ma'am.

Q. Is it possible you could have? A. It's very possible.

Q. Like this had reflected your feelings at the time?

MR. MOLONEY: Objection to what his feelings were.

THE COURT: Overruled.

Q. Are you going to answer? A. Repeat the question again.

Q. Might this expression, "You've caused enough trouble today," have reflected your feelings at that time? A. It would have been true, yes, if I had said it, because he had indeed caused enough trouble.

Q. To what are you referring, Trooper Harlowe? A. As I stated when I started, I seen him on three occasions.

Q. Would you tell us about the earlier occasions on which you had seen Mr. Colten? A. The first occasion was—

MR. MOLONEY: Judge, [67] Your Honor, I think what we're concerned with is whether or not—

THE COURT: I agree. I think there's no questions about the Trooper's feelings, so we don't have to go into his thoughts at the time. He stated what they were.

MR. GOLDMAN: Your Honor, if we may approach the Bench?

THE COURT: You don't have to approach the Bench.

MRS. WILSON: Well, we'd just as soon pursue this with Trooper Harlowe a little more.

MR. GOLDMAN: Your Honor, we feel we have authorities on—

THE COURT: He says that he was upset with this defendant that day, and if you're going to go into his motive as to why he may have arrested him—I think that's what you're attempting to do—and he said, "If I said it, it was true." I think he's already stated it for you, the answer you want.

MR. GOLDMAN: Your Honor, [68] if we may approach the Bench? We have other reasons for—?

THE COURT: All right.

(Conference at Bench out of hearing of reporter, between Court and counsel.)

MRS. WILSON: Could you read back the question, please?

(The reporter read Question X41 to the witness.)

Q. Would you answer, please? A. The first time I saw him was when he, Mr. Colten, as the airplane was getting ready to leave they come up to me where I was stationed at, at the airport, and said, "We're going to have a party." I said, "Not out here," so they then proceeded to get over on the lawn of the airport and throw themselves a little whooping and hollering party over there or whatever they call it, creating a scene. That was the first time. The second time I seen him was when Capt. Mayes advised him, with the group, to leave, and the third time is when I arrested him.

Q. As a police officer, Trooper Harlowe, I assume that you have encountered demonstrations before?

MR. MOLONEY: Your Honor, I think we're going awfully far afield here. I think we've got to try this case.

THE COURT: Sustained.

[69] Q. Did you at the airport hear Mr. Colten or observe him do anything you found particularly offensive?

MR. MOLONEY: Objection again.

THE COURT: I'll let him answer.

A. Yes. In my— I shouldn't say in my opinion. He was disorderly at the airport, yes, before he was arrested. He most certainly was.

Q. Did you issue a citation at that time? A. No, ma'am. That's on private property. It was left up to the owner of the airport what action he wanted taken. It was when he got on the road down there that we took action.

Q. What did he do or say that was disorderly at the airport? A. There was people all going in and out of the airport. They were all standing around, a group. Not only Mr. Colten, a group, hindering the people going in and out of the airport.

Q. This is what you found disorderly? A. Yes, ma'am, [illegible]ure did.

Q. That there was a group of people standing there? A. Yes.

Q. This is all that you found disorderly? A. Yes, that and their appearance. We—

[70] Q. What about their appearance disturbed you? A. You want me to answer the question?

Q. Yes. A. Okay. When you get out in public, you try to dress decently and when you're around not create a big scene, with an awfully lot of important people traveling in and out of the airport, they can't stand around in front of everybody creating a scene.

Q. Was Mr. Colten nude? A. If he had been, he might have been locked up before. I don't think that—

Q. Was his dress indecent? A. Do I have to answer that question?

THE COURT: Yes.

A. It's about like he's dressed today, ma'am.

Q. You find his dress indecent? A. Well, I don't know whether he had any shoes on that day or not. I don't know what he had on then, but he was creating a scene is what I'm getting at but he wasn't arrested.

Q. People who dress like this offend you? A. I didn't say that.

MR. MOLONEY: Your Honor, I really believe that Mrs. Wilson has proved every point she wants to prove by this line of questioning, and we've [71] got several more witnesses to call, and I think we better move on.

THE COURT: I think so too.

MR. GOLDMAN: We accept the prosecutor's judgment, Your Honor.

Q. Trooper Harlowe, when you ordered Mr. Colten to leave and he responded that he wanted to stay around and see what happened, did he make any other response? Did he say anything else? A. He said he was just going to stay around and see what happened.

Q. Did he say anything else? A. Not that I recall, ma'am.

Q. Did he ask whether he could take some of the people home in the car that was being commandeered? A. He could have. I'm not saying that he did or didn't. I don't know.

Q. He might have said that? A. He might have, but when I told him to leave and he didn't, and also the other request, I think that was enough to make the man leave.

Q. The only response which he made to you that you remember was that he was going to stay around and see what happened? A. Yes.

[72] Q. Were there any other non-police officers in the immediate vicinity at the time that you placed Mr. Colten under arrest?

THE COURT: Now, I don't know what you mean.

A. I don't either.

Q. Any other civilians.

THE COURT: Were there other people around other than policemen, is that what you're asking? All right.

Q. Yes. Seems like there was another young lady standing around somewhere. I don't know, but there was someone else out there, I believe, yes.

Q. Would you describe the young lady? A. She had on a buckskin outfit at that time and barefooted. I don't know what she's got on today.

Q. Was she tall, short? A. Short and heavy set. She's here.

MR. GOLDMAN: Your Honor, I think we have only three more questions.

MR. MOLONEY: Your Honor, are we going to switch off on this?

THE COURT: I think one of you at a time better take this [73] witness.

MR. GOLDMAN: All right, Your Honor.

Q. Were your instructions to Mr. Colten, Trooper Harlowe, directed solely at getting back into his automobile? A. Solely getting him into a car and leave, yes, ma'am.

Q. Did you at any time tell Mr. Colten to take his hand out of his pocket? A. I sure did, yes, ma'am.

Q. When did you do this? A. When I placed him under arrest.

Q. Before or after? A. I walked up to him and I was talking to him there and told him that he was under arrest.

He had his hand in his pocket. I asked him to remove his hand from his pocket.

Q. This was after you had told him to leave, he had said, "I'm going to stay around and see what's going to happen," and you said, "You're under arrest," or words to that effect? A. Yes.

Q. And then you said, "Take your hand from your pocket"? A. I might have said it before then. Yes.

Q. Before? A. I could have when I searched him, though, but I could have said, "Take your hand out of your pocket," before then.

Q. What did you do when he took his hand out of his pocket? A. Took him by the arm and started to the paddy wagon with him.

Q. Did you say anything to him at that time? A. No.

Q. At the time you took him by the arm—? A. No.

Q. —and started toward the paddy wagon? You didn't say anything? A. No.

Q. Did you ask him at that time whether or not he was going to leave? A. No. I didn't say anything.

Q. You didn't ask him to—? A. I wasn't interested then whether or not he was going to leave.

Q. You didn't ask him to leave, whether he was going to leave after you took him into physical custody? A. No.

THE COURT: I think his [75] * * *

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[88] EVIDENCE FOR DEFENDANT

LEWIS COLTON
DIRECT EXAMINATION

BY MRS. WILSON:

Q. Mr. Colten, on the afternoon episode in question, March 3rd, were you at the airport? A. Yes.

Q. What was the occasion of your being at the airport? A. My particular reason for being at the airport was a demonstration, a show of support for a gubernatorial candidate who was running for Governor for the State of Ken-

tucky, who was at the airport at the same time Mrs. Nixon happened to be there.

Q. While you were at the airport— Had you driven to the airport? A. I had driven to the airport earlier that morning, yes, and I was driven back by another car. I had come back in a limousine and had left my car at the airport, and then I went back to the airport for the second time to see our candidate off.

Q. And did you leave the airport in your own car? A. Yes, I did.

Q. Were you driving that car? A. Yes.

[89] Q. Was there anyone else with you in the car? A. I believe there were two other people with me in the car.

Q. Who were they? A. One fellow was named Gary, I'm not sure of his last name—Seale, I think, possibly—and I'm not really familiar with the name of the other person.

Q. Did you return from the airport directly to Lexington after Mrs. Nixon left? A. No. Well, I don't really remember how I got back to Lexington.

Q. Will you tell us in your own words what happened after you turned onto the airport access road from the road into the parking lot? A. I was following a procession of cars. There was a large number of us that were at the airport to see Mrs.— At that point I think there was a large number of us that were leaving at the same time. I was near the end because my car wasn't parked with everyone else's car in the regular airport lot. There was an overflow of cars and they had opened up a new parking lot on the other side of the fence, which required me all of the way across the field to get my car, so I was pretty much near the end of the procession when I finally got out. I was following a green convertible owned by Guy Mendez.

[90] Q. Were you directly behind Mr. Mendez' convertible? A. Yes, I was.

Q. Approximately how great a distance or how many car lengths between you and Mr. Mendez' convertible? A. About two car lengths.

Q. About two car lengths? Continue. A. We were traveling, by the time the procession had gotten out of the access road, we were traveling at, I don't know, were traveling, I think, about 20, 25 miles an hour because we were starting to pick up speed, and I noticed at that time a police car sped past me with the blinking light on and pulled up alongside of Mendez or Guy Mendez' car. That car, I don't know what had happened there, the car had pulled up and then dropped back and then cut right behind Guy Mendez' car, causing me almost to hit the car, hit the cruiser, the police cruiser, because I wasn't aware of what his movements were, he just pulled up alongside the car and slowed down, and as soon as he slowed down, he cut behind Guy's car.

Q. When you say the trooper cut between you and Mr. Mendez? A. Yes, and I wasn't— I didn't— I had not suspected that move to take place, and I slammed the brakes on and tried to avoid getting into a collision. I stopped, and at that time the officer got out of the car and walked [91] up to Guy Mendez' car.

Q. Was Mr. Mendez parked on the road? A. Well, when he—the officer said something to him and he started pulling over, and as he was pulling over, in that same move, that's where the police officer pulled behind, you know, pulled behind Guy's car, which caused me to stop and then I pulled behind, I pulled off the road and behind the police car. At that time there was still some other cars that hadn't caught up in the procession—I believe there was still cars—plus the cars in the front had recognized what was happening, and they pulled over also.

Q. Mr. Colten, would you go to the board and place the cars to the best of your recollection in the positions in which you recall their stopping? A. Well, if this is Guy Mendez' car, his car came down the road and stopped about here, and the police car—

Q. How do you identify the point at which Mr. Mendez' car stopped? A. Well, of course, the people—the people that were in this side of the car, I had walked up alongside the car at one point, and I was pressed up against the fence.

Q. You are saying that the fence was closer to the road at that point? A. Yes, it's only two feet from the shoulder of the road. It's very narrow at that point so there's really [92] not much space there. The police car had pulled in over here, I had pulled in over here, there was some cars behind me and there was some cars in front of me—in front of Guy's car.

Q. Were any of the cars parked on the road? A. No. These cars that stopped? No.

Q. You pulled over and got out of your car and what did you do then? Go back and sit down. A. I saw a police officer get out of the car and go up to Guy Mendez' car. He had gotten up to his car and I was curious as to what was happening to Guy, and I had gotten out of my car and walked towards the police officer and Guy's car, and when I had got there, the police officer was speaking to Guy, and I just stopped and stood behind him. I didn't say a word to him because he was busy talking to Guy Mendez, and it was really none— I wasn't really interested in what he had to say, I was more or less concerned about Guy. I know better than to interfere with a police officer in whatever he was doing so I hadn't said a word to the police officer.

Q. At that point where were you standing, Mr. Colten? A. Behind the police officer.

Q. Behind the police officer on the driver's side of Mr. Mendez' car? A. That's right.

[93] Q. Were there any other people around at that time? A. The only people that were around— I mean the only people that were there were the people that were inside the car.

Q. In Mr. Mendez' car? A. Yes.

Q. How many people were in Mr. Mendez' car? A. He had a full car. There was six including himself.

Q. There were five other people and Mr. Mendez? A. That's right.

Q. Did you speak to Trooper Miller? A. Not once, no.

Q. Did Trooper Miller speak to you? A. I don't believe he said anything to me.

Q. What happened next? A. I was concerned– I had overheard– I had overheard what was happening between the officer and Guy Mendez, and he asked Guy to get out of the car and come back to his cruiser. Well, when he opened up the door, the police officer was in a position where he was in front of the door and when Guy had gotten out, I was then, you know, I was then standing in front of Guy so I was able to question Guy at that point.

Q. What did you say to Mr. Mendez? [94] A. I had asked– I think at that point I asked, "Is there any trouble?" I think at that point that's the only thing I– Well, I asked if there was any trouble, and then I had just recognized a point when both of us– The officer then, when he was standing behind us, told Guy to go to the police wagon, and I started walking with Guy to the back of Guy Mendez' car, and then I asked– I just realized something had happened to me with my out of state tags. My state had given me a six week extension and it was on March 3rd, and I figured it was possible that he had done the same thing, so I had asked Guy Mendez if there was a possibility of his state having granted a six week extension on auto tags. I don't know whether he heard me because at that point he was talking to the police officer. So that's all. That's what happened.

Q. You walked back to the trooper's car with Mr. Mendez? A. Well–

Q. Where was Trooper Miller at that time? A. Trooper Miller was standing behind me.

Q. Behind you and Mr. Mendez? A. Yes, and I had gotten to the back of Guy's car and walked between the police car and Guy Mendez' car, and I walked then up toward the front of Guy's car, and Guy came through there, came through the same place I had walked and got into the police wagon or police car, and I [95] imagine the trooper walked back also. At that point I had asked the people in the car what was going on, and I believe somebody then said there was going to be some kind of problem with the car being taken, and I had said, "Well,"

you know, "I've got an empty car and we could take you," but at that point they didn't know whether they didn't have a ride or not. Nobody was really sure what was happening.

Q. Did you speak to Trooper Miller at any time after Trooper Miller got into his car? A. No. I never spoke to Trooper Miller at all.

Q. Did Trooper Miller speak to you at that time? A. If he did, I was not in a position to hear him because at one point I was in front of him, facing the opposite direction, and possibly I was too far away from him because he was going in one direction and I was going in another. We were going two separate directions, so if he was speaking to me, I certainly didn't hear him.

Q. What happened next after Trooper Miller and Mr. Mendez were both in the car? Where did you go? A. Well, like I said, I walked up to the front of Guy's car. At that point I had noticed that there were people in front who were getting—who were concerned about what was happening, and they were getting out of the cars, and there was a group of people coming up the road, and they were on the grass part and on the shoulder of the road because there was a series of cars in front of [96] Guy's car. They were moving towards—they were moving towards Guy's car. At that point I still was concerned about the six week extension, so I turned around and went back to the police van or the police wagon—police car, excuse me—and I had gotten up to the window of the car, and—

Q. Was the window open or closed? A. No, the window was closed, and the officer was asking Guy Mendez a series of questions, and I had tapped on the window and tried to get Guy's attention again to find out whether the car was being confiscated or what was happening with the people that were in the car, and, you know, if there was anything that I could do because Guy's car was packed and my car was fairly empty. I was the only car that had as few people in it as it did, so just at that point, just when I started to try to get Guy's attention, Officer Harlowe

came in between the police car and Guy's car and started walking towards me and was, you know, very–

Q. What did Officer Harlowe say? A. Well, he said it in sort of a belligerent manner that sort of frightened me, that caused me to back up. He said– At that point there he said, "Okay, loudmouth, get back in your car," and I sort of jumped back because of this, you know, because I wasn't– I hadn't expected that, or I hadn't even seen the officer coming [97] over around the car because I was still trying to talk to Guy. I turned around and I said, "Well, okay, but can I take those people in the car with me?". At that point he came right up to me, and he said, "I'm going to tell you one more time, get out of here," and I said, "Okay, I would like to take these people with me," and then he said "Take your hand out of your pocket." I took my hand out of my pocket, and instantly he pulled some sort of move that I just– I had been backing up. While he was doing this, his chest was up against mine, and he was backing me up towards the fence. I was almost up against the fence when he finally grabbed hold of my arm and twisted it and started taking me towards the police wagon, or the police car, and he walked me in between the police car, and at that time he said again, "Are you getting out of here?"

Q. Was he still holding on to you at that time? A. Yes, he had my arm behind me, behind my back, and he said, "Are you getting out of here?" And I said, "Sure, yes." At that point I wanted to get out. I wanted to leave, you know, and I still was concerned about the people in the car because I didn't want to have those people stranded, and I know that there was no other way for them to get back because every car that was there was packed.

Q. What happened after the third time that he said, "Are you going to leave?" [98] A. I said the same thing, you know, I said on the two previous inquiries. I said, "Sure, I'm going but can I take these people with me?"

Q. What was the response? A. I got hit on the head.

Q. I beg your pardon? A. I got hit on the head.

Q. What happened next? A. I became unconscious and I got hit several other times.

MR. MOLONEY: Objection, Your Honor. If he's unconscious, if he's testified he's unconscious, how does he know he got hit?

A. I was in the process of being unconscious. Well, I was hit and I was becoming dizzy and as I was falling, I felt three other blows or two other blows hit me which caused me to become—

Q. Are you saying that Trooper Harlowe hit you? A. I don't know who hit me. I'm not sure who hit me.

Q. Did Trooper Harlowe at any point advise you that you were under arrest? A. No. Not at all.

Q. The first time that Trooper Harlowe approached you and said, "Loudmouth, are you going to leave," had you [99] been saying anything in a loud tone? A. No, I hadn't. The only time I had spoken to anybody was to Guy Mendez.

Q. Did you see Trooper Harlowe before that time on this day? A. No.

Q. You had not seen Trooper Harlowe? A. Not that I could recall, no.

Q. Not that you recall? Was there any reason that you are aware of why Trooper Harlowe would address you as "loudmouth"? A. Possibly. Possibly because of the day's activities.

Q. But you had no direct contact with Trooper Harlowe that you are aware of? A. No.

Q. Did you make any response to Trooper Harlowe such as, "I think I'll stay around and see what happens"? A. No, I didn't. I really wasn't interested in what was happening. I mean I wasn't really interested as far as the happening, I was just interested in the other people in there and in their getting back to Lexington.

Q. Did anyone other than Trooper Harlowe order you to leave? A. No.

Q. Were you present in a crowd when Capt. Mayes [100] ordered a crowd to leave? A. No.

Q. Did you see Capt. Mayes come upon the scene? A. No.

Q. Did you see any other police officers other than, in direct confrontation other than Trooper Miller and Trooper Harlowe? A. They were the only two officers I ever had any, you know, any contact with or any verbalization at all.

Q. Before the arrest? A. Before the arrest.

Q. Mr. Colten, did you see any "no parking" signs there on the roadway? A. No. Yes, I saw them on the other side of the road.

Q. On the other side? Were there any on the side of the road where you were parked? A. There's nothing to put them on.

Q. Did anyone point out any "no parking" signs? A. No.

Q. Did the police officers tell you that there was no parking? A. No.

Q. Did anyone offer to give you a parking citation? A. No.

[101] Q. Did anyone indicate to you that parking was probhited at that particular place? A. No.

Q. The only conversation which you had with the police officer was, "Are you going to leave?" A. Yes.

MRS. WILSON: That's all.

CROSS EXAMINATION

BY MR. MOLONEY:

Q. Mr. Colten, is it your testimony that from the time you went up to Mr. Mendez' car until the time that Trooper Harlowe arrested you, you just didn't talk to anybody and nobody talked to you, and all of a sudden Trooper Harlowe came up and arrested you? A. I spoke to the people in the car because at that point everything had happened very quickly, and I was the only one to have seen what was actually happening. I don't think the other people who were getting out of their car even realized what had happened, so the only person I had come in contact with was Trooper Miller at that point, yes.

Q. Then this testimony of the troopers—you have sat here and listened to them—remembering specifically that they told you to leave, that just isn't true? A. That's absolutely not true. I did not see Officer Brown. I never even saw Officer Brown until today.

[102] Q. You would remember him if you saw him there, wouldn't you? A. I sure would.

Q. You think he might remember you if he saw you? A. Obviously.

Q. And you said you were out there for some kind of demonstration of some type. What kind was that, now? A. We were out there in support of our gubernatorial candidate.

Q. And who's that? A. Sam Mason.

Q. Sam Mason? Where was Sam going? A. Pardon?

Q. You say Sam was getting ready to leave? A. Yes.

THE COURT: That might be interesting, but I don't think it's relevant or material.

MR. MOLONEY: Well, maybe Sam was going to leave the state, Your Honor, I don't know.

Q. Did I understand you to say there were only two people in your car? A. Yes.

Q. Who were they? [103] A. Gary Seale, and I think his name was James Natlock or something.

Q. You don't remember the name of the person in the car with you? A. The two people that got in my— I had nobody in my car, and as the crowd was leaving I had asked anybody that was in a crowded car to come along with me because I had an empty car, and everybody obviously was situated. There were two people, these two other people must have been in a somewhat crowded car and wanted to come along with me. I didn't question who they were or what their names were. It wasn't until later that I found out what their names were.

Q. You kind of stayed behind to make sure everybody had a ride, is that it? A. Yes, sir.

Q. You were the last car out? A. Well, I thought I was the last car out. There were some other cars that came behind me.

Q. You were just taking care of everybody that was out there that day at the demonstration, making sure that they were all right? A. Making sure that everybody got back to Lexington, yes, sir.

Q. Were you their leader, so to speak? A. Well, what do you mean by "leader"?

[104] Q. Were you their leader? Were you their spokesman? A. You might say so.

Q. I think it's a fairly common term. A. You might say so.

Q. You were in some kind of procession, you call it. Is this a formal procession? A. Yes, sir.

Q. Leaving the airport? A. Yes, sir.

Q. What was the reason for a procession? A. We had no place— There was no reason to stay at the airport, and so we all got the idea at the same time to leave the airport, and so we all left the airport and it just so happened that we were all in a line.

Q. And therefore it became a procession? A. Yes.

Q. It wasn't planned ahead of time or anything, was it? A. No, of course not.

Q. Of course not? Mr. Colten, on direct examination you started to answer a question and you said this, talking about when you were leaving, "Well, you see, there were a large number of us out there to see Mrs.—," and then you stopped and started over again. Were you [105] about to say there was a large number of you out there to see Mrs. Nixon? A. Okay. Yes. All right.

Q. So you went out there to see Mrs. Nixon. This Sam Mason story is just a story. A. No, it's not a story. It's a fact. The purpose of our day, all right, if we're going to go through this—

THE COURT: I don't think it's material why they were there.

MR. MOLONEY: Your Honor, I think it is as material why these individuals, in particular Mr. Colten, were at the airport as is material Officer Harlowe's motives which Mrs. Wilson was permitted to bring out.

THE COURT: All right, but let's try to move the trial along a little faster, will you?

MR. MOLONEY: All right, sir.

Q. Wasn't it a fact that there was a planned demonstration out there to protest Mrs. Nixon coming to Lexington, to protest the Vietnam War through attempting [106] to protest against her? A. We feel that– I feel–

Q. I think you can answer– A. All right. I feel and the people who were a part of the day's proceedings felt that a demonstration against Mrs. Nixon and against the policies that Mrs. Nixon stands for, against the pseudo volunteer program that she tried to force down Lexingtonian's throats, was not of our– We weren't going to have the same sort of demonstration that everybody is accustomed to, and it was not a demonstration. We feel that Mrs. Nixon wasn't worthy of our attempts to demonstrate against her, and so we feel that our demonstration would be more in keeping with the pllicies Mrs. Nixon represents by ignoring her and by ignoring her, we felt that we have a candidate who is running for governor and that we would like very much to show the people of Kentucky that our gubernatorial candidate is more worthwhile as a positive demonstration, rather than a negative demonstration, and so we were there to demonstrate for San Mason and ignoring Mrs. Nixon altogether.

Q. Was this "we" you refer to, is this any type of organized group? A. Yes.

Q. What is the name of that group? [107] A. Citizens for Sam Mason. There was no real– There was no–

Q. Does it also go by the name of Students for a Democratic Society? A. Students for–? There was a coalition of organizations, if that's what you're looking for, coalition representing Young Democrats, representing Students for Democratic Society, representing Student Mobilization Committee, representing just concerned students, representing just concerned students, representing concerned Lexingtonians.

Q. I see, Where are you from, sir? A. Pennsylvania.

Q. Living in Lexington? A. Yes, sir, and I'm applying for residency now.

Q. Now, one question I want to ask you, you say there were a lot of cars—referring to the side of the road here—"There were a lot of cars behind me and a lot of cars in front of me." Are you referring to saying there were several cars in front of Trooper Miller's and Mr. Mendez' cars? A. Yes.

Q. Were there several cars behind there? A. I believe there was maybe one or two cars behind me.

Q. Who were in these cars? A. People who were at the airport.

[108] Q. This procession? A. Entirely of people at the airport, yes.

Q. Of your organization? A. Yes.

Q. What was the reason for them stopping? A. The same reason for my stopping. There was one of us that was being stopped by a police officer and was concerned about that person being stopped. We are all brothers and we care for each other.

THE COURT: You had been acquainted with the fellow Mendez before? A. Yes, sir.

THE COURT: How well do you know Guy Mendez? A. I'm not a very good friend of his. I know him. I knew of him at the time.

Q. Mr. Colten, let me ask you, did I understand your testimony to be yours was the only car that had room in it? A. Yes, sir.

Q. Then these other cars that were stopped couldn't take anybody out of the Mendez car back with them? A. I don't believe.

Q. And they really had no business stopping, did [109] they? A. Concern for one of their own, I would say that they had reason for stopping.

Q. You said that you were able to question Guy Mendez? A. Yes.

Q. But you didn't talk to Trooper Miller? A. No, sir.

Q. Now, you're sure you didn't talk to Trooper Miller? A. No, sir.

Q. Or to Capt. Mayes? A. No, I never.

Q. Nor Trooper Brown? A. I've never seen Trooper Brown.

Q. And they didn't speak to you? A. They said they spoke to me. I did not see them speak to me and I didn't see them.

Q. You indicated a group of people were coming up the road. How many were in this group? A. Well, I really . . . I really can't say because I was . . . I was in between . . . Like I say, I was in between the fence and the car, and there was a group of people coming up between on that grassy area. They were coming up that area. I believe there were other people—I'm not really sure because I had to look over everybody's car, [110] but I believe there were some people on the shoulder of the road on the other side coming also. I really couldn't tell. I would say there were . . . .

Q. Fifteen to 18 people? A. Possibly, sir.

Q. And they were walking down a two foot area of grass along beside the cars? A. No. They were down much further. See, there's a 60 foot portion of the fence that's only two foot wide. After that there's a big field. There's a big grassy field. That's where those people were. They were in that grassy area that I saw down . . . .

Q. They never got in the road? A. I couldn't tell because I was on the . . . . I was on the inside. I didn't really see the people that were on the outside.

Q. Let me ask you, you stated that you did not see Trooper Harlowe throughout the day's activities? A. I may have seen him in a group of other police officers because all of the police officers had been together, so I mean I didn't pick him out as any individual.

Q. But you indicated in response to a question from Mrs. Wilson that he may have for some reason had a reason—he may have had reason to call you "loudmouth" after the day's activities. Did you act in some manner [111] as to give him that cause? A. No. That's probably the same reason why he feels my appearance is offen-

sive, is that possibly anything I might have said was offensive.

Q. But "loudmouth," you didn't talk in a loud or a noisy tone at any time during that day? A. Well, we were giving speeches during the day.

THE COURT: Let me ask you one question. You said at one point in your direct testimony that you were crowded in against this fence. Who crowded you in against this fence? A. Oh, Officer Harlowe, when he came around the car he had burst out or he had made the statement, which startled me, and I backed up, and as I was backing up, I was backing up straight back towards the fence, and he was sort of coming after me, or he was sort of walking along with me, asking me the same question, the second time he asked the question. He had asked it once and I was still backing up and I had said, "Yes," and by the time he said it the second time I was almost near the fence.

THE COURT: I thought you said at one time earlier that there were some other people there in front of Mendez' car [112] also inquiring, and I was thinking that you said the crowd of those people had crowded you also into the fence. A. Oh, no. No, no.

THE COURT: Mr. Colten, I think you testified that you were not in the crowd that was coming up from down in this area, is that right? A. That's right.

Q. You were not at any time in this crowd that Capt. Mayes has testified he told to move on? A. I didn't see that. I didn't see a crowd there. I honestly didn't because I was in the other area, and I was being . . . I was being . . . My attention at that time directed entirely with Officer Harlowe, and I hadn't recognized anything at that point that was going on anywhere, so I don't know . . . the people that may have come up the road from the other side may have gathered there, I'm not really sure. I really don't know.

Q. But you were never with them? A. No, I was never with them.

Q. You were always up there by yourself? A. Well, no, he brought me back.

Q. Not with any of your organization? A. No. No, I wasn't with anybody.

Q. You never joined in with those who were in your organization once this car was stopped? A. No, sir.

Q. But you were their leader, I think you said? A. Well, when you say "leader," that's a rather loose term. That's not really . . . when you say "leader," I'm not . . . I'm not really a leader. There's no . . . When you say "leader," it's not that I'm saying something to people that are obeying it. It's, you know, I'm not a dictator, and I'm not an authoritarian. If you consider making a couple of speeches being a leader, then possibly that may be the term. I didn't—

Q. You don't give orders? A. No, I don't.

Q. You don't hold any office in any organization? A. Yes, I do.

Q. Oh, do you? What? A. I'm Steering Committee member for the Students for Democratic Society.

Q. Steering Committee member? A. That's right.

Q. Did you make a speech out there at the airport? A. Yes, I did.

Q. Then this may have been where Trooper Harlowe may have come up with that term "loudmouth"? A. Possibly. Like I said, anything that I may [114] have said may have been offensive to him because of his definition of my appearance.

MR. MOLONEY: Well, okay. That's all.

REDIRECT EXAMINATION

BY MRS. WILSON:

Q. Mr. Colten, what other groups were at the airport, or of the other groups that were at the airport during the day, were you the leader of them all? A. No. There wasn't any leader for that day.

Q. Was everyone that was there and in that procession of people going back and forth supporting your, I guess you would call it a counter-demonstration to Mrs. Nixon? A. Yes.

Q. Everyone in the group was supporting your counter-demonstration? A. Well, if they supported it . . . I mean there was no outright support of it because people were there for different reasons.

Q. Are you saying some people were there for reasons different with your group presumably and they were among your people but for reasons different than your counter-demonstration? A. Yes, I'm sure there was.

Q. Does the group which you identified as the [115] SDS have a president? A. No. We are made up of a steering committee.

Q. Then there is no head man, head leader of the SDS? A. No.

Q. At the time that Trooper Harlowe approached you, how many civilians were right in the immediate vicinity? How many non-police officers were right there? A. There were . . . I possibly recognized maybe two or three people, possibly. I mean my attention wasn't directed toward them so I really wasn't concerned about the people that possibly had been around there, but I was only, like I said, I was only concerned with what . . . Excuse me . . . with what Trooper Harlowe was saying to me, so I caught maybe two people at the most.

Q. Were any of the people who were moving along the road toward the Mendez and the Miller car coming at your specific instruction?

MR. MOLONEY: Your Honor, I question whether this is proper redirect.

THE COURT: I think he's right.

MRS. WILSON: Your Honor, Mr. Moloney has tried to show or seems to us to be trying to show that [116] Mr. Colten even though he was not in the road or can't be identified as having been in the road with this group of people, who were presumed to be obstructing traffic, was in some way a leader and therefore responsible for their having been there.

THE COURT: Go ahead.

A. I'm sorry, could you repeat the question.

MRS. WILSON: Can you read that question back?

(Reporter read Question RD8: "Were any of the people who were moving along the road toward the Mendez and the Miller car coming at your specific instruction?")

A. No, not really.

MRS. WILSON: That's all.

MR. MOLONEY: No questions.

THE COURT: Who was giving guidance to the group that day? You said there was concerted activity.

A. As far as guidance, I guess about four or five were doing, who had mapped instruction on the program out for the day.

[117] THE COURT: All right.

EARL CRAIG WINKLE
DIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Mr. Winkle, were you at Blue Grass Field on the afternoon of March 3rd?

REPORTER: Could I have his name for the record?

Q. I'm sorry. Would you state your name, please? A. Earl Craig Winkle.

Q. And your address, please, sir? A. 245 Rodes Avenue,

Q. On March 3 on the afternoon were you at Blue Grass Field? A. Yes.

Q. Were you there together with other people or did you go there by yourself? A. I went with some other people in my car.

Q. In your car? A. Yes.

Q. At whose request did you go there? A. Well, I went there just, you know, for my own benefit.

Q. What caused you to go there? [118] A. Curiosity mostly. I wanted to, you know, see Mrs. Nixon.

Q. Did you prior to March 3rd know the defendant, Lew Colten? A. No. I met him the day of the trial. I don't know what day that was.

Q. Did you see Mr. Colten out at Blue Grass Field? A. Yes.

Q. But you had never personally met Mr. Colten up until the time of the trial in the court below? A. That's right, I didn't know him until then.

Q. About what time did you begin to leave the airport? A. Oh, 20 minutes maybe after Mrs. Nixon's plane left.

Q. About what time of day was it? Do you have any recollection? A. No.

Q. Were you still in your own vehicle? A. Yes.

Q. Did you have any passengers? A. Yes.

Q. Do you know who they are—who they were? A. There's one that I don't know, but Sally Phlipps was one and Melanie Barrow was the second.

[119] Q. Did you know any of these people prior to that day? A. Yes.

Q. Did you know all of them except that one prior to that day? A. I didn't know Sally.

Q. When you were leaving the airport did you observe anything unusual? A. No, I don't think so. You mean—

Q. Did you observe any cars on the side of the road? A. Well, when Guy Mendez' car was pulled off the road, Lew pulled up behind the trooper's car, then I pulled up behind that.

Q. Did you at that time know Mr. Mendez? A. Not personally. I would know him to see him.

Q. Had you by that time identified Mr. Colten as an individual who had been amongst the group at the terminal? A. When he got out of his car, I saw him, but not until he got out of his car.

Q. Would you step to the board, please, sir, and show—Let us assume that the yellow vehicle— Let me first ask was there a police vehicle on the side of the road? A. Yes.

[120] Q. Was it directly behind Mr. Mendez' vehicle? A. Yes.

Q. Would you show where your vehicle—what you did with your vehicle as you arrived? A. Well, assuming this would be Guy—

Q. Excuse me, would you step on the other side so His Honor can see the board. A. If this is representing Guy's car—

Q. Let's assume the yellow car is the police car. A. Okay. Then this would be the Colten car and mine was right here.

Q. You pulled in behind the vehicle that Mr. Colten was in? A. Yes.

Q. What did you then do? A. I got out of my car.

Q. On which side did you get out? A. Driver's side.

Q. And then where did you go? A. I got out and then came around the side of the car and went between the cars and stood up on the grass.

Q. You went in front of your vehicle? A. Yes.

Q. And proceeded to the grass? Did you at any time stand around in the road? A. No, just long enough to get out of the car.

[121] Q. After you got to the grass did you at any time after that go back to the road? A. No, not until I left.

Q. You mean by that not until you returned to your driver's seat? A. Yes.

Q. Did you observe any "no parking" signs on that side of the road? A. I didn't see any.

Q. What did you observe happen from the position you were in on what you described as the grass? A. Well, when I got out of my car—

Q. Excuse me, you can return to your seat. A. When I got out of my car, I walked between the other cars and I was curious to know what was going on, and I noticed Lew asked somebody, you know, what was going on, you know, and someone said it was expired license tag of Guy's.

Q. Where was Mr. Colten at this time? A. He was right behind Guy's car.

Q. He was right behind Mr. Mendez' car? A. Yes.

Q. Which would place him in front of the police vehicle? A. Yes.

Q. Was he on the road or on the shoulder or on [122] the grass? A. He was in the gravel between the cars. Off the road, I think.

Q. Between the cars? A. Yes.

Q. Directly in back of Mr. Mendez' car, directly in front of the police car? A. Yes.

Q. Did you see to whom he addressed his questions? A. No, I didn't notice.

Q. Approximately how far away were you standing from him at that time? A. Well, maybe 20 feet.

Q. You heard him ask a question? A. Yes.

Q. And you've testified as to the response? A. No, I don't know what was said, and then he went around and asked Guy. Guy was sitting—

Q. When you say he went around and asked Guy, where did he proceed to? A. He walked around to the passenger side of the police car.

Q. Do you recall whether the window was open or closed next to Mr. Mendez? A. I can't remember whether it was open at that time. I looked back later and it was closed, but I can't [123] remember whether or not it was open at the time.

Q. Did you see Mr. Colten have any conversation with Mr. Mendez? A. Lew asked him something and Guy just looked his way and then looked back again, and I don't think he said anything. I think it looked like the trooper was asking Guy something.

Q. At this time did you notice whether there were any people standing in the road? A. Not that I know of. There were several people out of their cars.

Q. Where did you observe people standing? A. Well, once I got out of my car and went between the cars, I walked on up on the bank in the grass and Sally Phlipps was with me—well, not personally with me, but she was right next to me, and I don't recall any other people, although I know there was someone else out of the car.

Q. Did you see any policemen standing around? A. Yes.

Q. Where? A. On the road side of the car, coming from further up back in the line.

Q. Did you hear any order given for people to get back in their cars or to leave? [124] A. An order was given to Lew. One trooper came up to him, and at this time he wasn't talking to Guy, he was standing maybe four feet in front of me.

Q. Did you hear any orders given prior to hearing that order given to Mr. Colten? A. No.

Q. Would you tell in your own words what you saw happen when the officer approached Mr. Colten? A. Well, he came at him sort of fast and pointed at him and said, "All right, loudmouth, get in your car," and Lew said, "Okay, but can we give these people a ride?" And I believe he was referring to the people that were in Guy's car because we had heard that Guy wasn't going to be able to drive the car—

MR. MOLONEY: Objection to all of this what he heard and what he believes.

THE COURT: Objection sustained. Just tell what you know and not what you guess happened.

A. Well; I know it was for those people to get a ride.

Q. You know that he— What did he state to the officer? A. He said, "Okay, but can we give these people a ride?" And the officer said, "I said get in your car [125] and leave," and then as he said that, he walked up against Lew and chest to chest with Lew and started walking backwards, and Lew said, "Well, can we give these people a ride?" And the officer said, "Take your hand out of your pocket," and Lew took his hand out of his pocket, and at that time the officer twisted it behind his back and started walking him toward, back toward the road.

Q. Did you hear the officer say anything further to Mr. Colten? A. No.

Q. Did you hear him ask him again whether he was going to leave? A. As he was walking toward the road, he said, "Now, are you going to leave?" And he said it twice, I think, and Lew said, "Yes, yes."

Q. And then what happened? A. Well, he walked him back down to the gravel between— Well, at that time a paddy wagon had pulled up on the road, and he was walking Lew back between the cars and got him into the gravel between the two cars, and at that time another officer jumped out of the paddy wagon and said, "We can take him," and walked toward Lew's front and grabbed hom of

him, and at that time two other officers besides the one that had hold of Lew's arm came from behind him, and one grabbed him by the hair and hit him twice in the head.

[126] MR. MOLONEY: Your Honor, I think that the testimony of the witness possibly pertains to an action in another court, and that there has been no identification of any officer involved here. I don't think it's any question it's any of the officers here, and I don't think it's pertinent.

THE COURT: Overruled.

Q. Did you at any time hear the officer who approached Mr. Colten, who you say addressed Mr. Colten as "loud-mouth" state to Mr. Colten, "You are under arrest"? A. No.

Q. Or words to that effect? A. No.

Q. Did you hear the officer make any reference to Mr. Colten's prior conduct during the day? A. No.

Q. Was Mr. Colten speaking in a loud voice? A. At what time?

Q. Well, at any time, any time from the time you arrived at the scene? A. No.

Q. How far were you from Mr. Colten during—starting with the time that the officer who grabbed him by the arm approached him, would you explain to us—what [127] your location was with respect to them during that period of time, from the time he grabbed Mr. Colten to the time he brought him in front of the police vehicle? A. Well, like I said, I was about four feet, five feet, behind him on the bank of the hill, and as the officer came toward Lew, he backed him up and he backed him up past me, and I guess I was still about five feet from him as he backed him up, you know, to the back of the hill.

Q. And then as they proceeded to the cars? A. Well, he passed me again as he went down to the cars and I—

Q. How far were you from the cars when they began to pass in front of the patrol car? A. Twelve feet, maybe.

Q. I believe earlier you stated—maybe I didn't hear you correctly—you stated something to the effect that you were, when you first got out, that you were 20 feet from where

Mr. Colten was. Is that correct? A. I believe so. That was when he was behind Guy's car and I was in the grass.

Q. Did you move closer to Mr. Colten or did he move closer to you during—? A. He walked back toward the vicinity where I was, and that's where the officer came up to him.

MR. GOLDMAN: Your [128] witness.

CROSS EXAMINATION

BY MR. MOLONEY:

Q. Mr. Winkle, was it your testimony that you were some 20 feet from Lew Colten when you heard him ask somebody what happened to Guy? A. Right.

Q. Did you hear the response? A. No.

Q. You heard him but you didn't hear the response? A. Yes.

Q. You don't know for any reason why Officer Harlowe may be calling him "loudmouth," though? A. No, I don't.

Q. But you heard him some 20 feet away? A. I'm sorry. May I retract that?

Q. You sure can. A. Well, earlier in the day Lew gave a talk at the airport, but that's my opinion again.

Q. Mr. Winkle, did Mr. Colten get an answer to his question as to what happened to Guy? Or do you know? A. I don't know if he did or not.

Q. Did I understand you to say you went to the airport to see Mrs. Nixon? A. Yes.

Q. Now, when you were leaving the airport, why [129] was it that you pulled over to the side of the road here? A. Curiosity again.

Q. Curiosity? A. We were all sort of in a group.

Q. You didn't know Guy Mendez? A. Not personally.

Q. Didn't know Lew Colten? A. No.

Q. Did any of the individuals in your car know Guy Mendez or Lew Colten? A. Yes.

Q. Did you hear the officers at the scene tell anybody to leave? A. When they came up to Lew.

Q. You didn't hear any other officer tell anybody to leave? A. No.

Q. Did you ever see a group of individuals in the roadway? A. No.

Q. Were there a group of cars in front of Trooper Miller's and Guy Mendez' cars? A. I don't believe so. Guy's was the first car.

Q. No cars in front of him on the road there? A. Not that I recall.

Q. Not that you recall? And to the best of [130] your memory the only person who was told to leave was Mr. Colten? A. Well, after he was told to leave, I heard another trooper when he came down toward . . . from further up in the road, saying, "Everybody get in your car."

Q. This was after? A. Yes.

Q. According to your memory? A. Yes.

MR. MOLONEY: I think that's all.

THE COURT: How many officers did you say grabbed Mr. Colten? A. Four.

THE COURT: Four at one time? A. One officer led him by the arm to the roadway and then just as the one other county policeman came out and grabbed him by the front, two others grabbed him from the back, so there was four at one time.

THE COURT: And who did you say hit him? A. One of the two that came up from behind him hit him. [131]

THE COURT: State policeman, county policeman? A. State.

THE COURT: State policeman? A. Yes.

THE COURT: And how did they hit him? A. With his fist.

THE COURT: Did it render him unconscious? A. Well, when he hit him, he fell to the ground, I guess they must have let go of him, and he was hollering, but he wasn't unconscious.

THE COURT: All right. Step down.

THE COURT: Let the case be continued until Monday at 9 o'clock.

(Court adjourned at 4:45 P.M.)

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Court met pursuant to the foregoing adjournment on Monday, the 27th day of April, 1970, at 9 o'clock A.M., with the defendant being present in open court and represented by his counsel, and the trial of this action proceeded.

Evidence for the Defendant, continued:

SALLIE PHLIPPS, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Will you please state your name for the record? A. Sallie Phlipps.

Q. Where do you reside? A. 272 East Maxwell Street.

Q. On March 3rd were you at the Blue Grass Field in the afternoon? A. Yes, I was.

Q. About what time to the best of your recollection did you begin to depart from the airport? A. 3, to 3:30.

Q. By what means did you leave the airport? A. I left in a car with some friends.

Q. And who was driving your vehicle? A. Craig Winkle.

[133] Q. Did you know Craig Winkle prior to this time? A. No.

Q. Then what caused you to get into Mr. Winkle's car? A. Oh, he asked if I needed a ride back to the Student Center, and I said, "Yes, thank you very much." I had seen him like in the Grill and things like that.

Q. On the way out of the airport did you observe anything unusual? A. Just one of our friends, namely Guy Mendez, was being pulled over by a State Trooper.

Q. All right, when you observed this, what happened? A. We also pulled over to see if we could be of any assistance.

Q. And would you please go to the board? Let us assume that the yellow vehicle is a police vehicle. Did you see a police vehicle on the side of the road? A. Yes.

Q. Would you show the Court which vehicle would have been Mr. Mendez' vehicle? A. This is Mr. Mendez' car.

Q. The one in back? A. Then this would be . . . Then this would be . . . Oh, this would be Guy's car, Mr. Mendex' car.

Q. The Versailles Road would be to your left. [134] A. Yes. Okay.

Q. Where did the car that you were in pull into? A. Oh, I guess right here.

Q. Behind the vehicle behind the patrol car? A. That's right.

Q. You can be seated again, Miss Phlipps. Did you notice who was in that car immediately in front of your car—the car between the car you were in and the patrol car? A. Yes, it was Mr. Colten's car.

Q. Did you notice whether there was anyone else in that car? A. I didn't see anyone else, no. I thought he was alone.

Q. Did you remain in your vehicle? A. No. I got out.

Q. Which side did you get out from? A. I got out on the right hand side.

Q. The passenger side of the vehicle? A. Yes, the passenger side.

Q. And where did you go from there? A. I proceeded up to Mr. Mendez' car. I assumed that he was being stopped for having expired license plates as a couple of our friends had earlier also—their cars had been taken away for the same reason, and they had quite a few people in their car, and we thought maybe they might [135] need—Craig and I—

Q. You say you went to Mr. Mendez' car? A. Yes.

Q. How did you proceed to his car—along the road, along the grass, along the shoulder? A. No, along the grass between the fence and the cars.

Q. Did you see any other people standing about at this time? A. Just myself and Craig and—

Q. Craig? A. Craig Winkle and Mr. Colten had gotten out of his car also.

Q. You saw no one else standing about? A. Not at the time, no.

Q. Did you see any police officers standing about? A. I don't exactly remember when they arrived, but, yes, later on they were standing about.

Q. Where was Mr. Mendez at this time? A. He was seated in his car, talking to a patrolman.

Q. What happened after you got to the car, after you got to Mr. Mendez' car? A. Mr. Mendez got out of his car and went to the patrol car with the patrolman, and I was talking to Mr. Winkle and Mr. Colten.

[136] Q. Where was Mr. Colten standing at this time? A. At the right hand corner of the police car—by the headlight, that is, I should say.

Q. The front? A. The front fender, yes.

Q. Right front? A. Yes, with myself and Mr. Winkle.

Q. Was he standing on the road? A. No. No.

Q. Did you at any time see him standing on the road? A. No.

Q. Did you remain there for the rest of the time until you got back into the vehicle you were in? A. Did I remain there? Yes. Yes.

Q. Did you see anything else happen? A. I saw Mr. Colten apprehended by one of the patrolman that kind of leaped in between the cars.

Q. You previously stated that later on other patrolmen arrived. A. Yes.

Q. Approximately when did they arrive in relation to the time at which Mr. Colten was apprehended as you have stated? A. I would say a minute before or two minutes before. I really have no conception of time. I wouldn't [137] say very long at all.

Q. Approximately how many patrolmen did you see? A. State Police or county—all together?

Q. All together? A. Seven or eight, nine maybe.

Q. Where were their vehicles parked? A. In the road.

Q. At this point in time, when the policemen arrived, did you see any non-policemen, any civilians, standing around other than Mr. Colten, Mr. Winkle and yourself? A. No, No, I didn't see any.

Q. Did Mr. Colten discuss with you the events that were taking place? A. We were both kind of rattling on, but neither one of us were listening to the other very much because we were just watching what was happening.

Q. What, if anything, do you recall Mr. Colten saying? A. I remember him telling me that he wanted to help some people get rides, just like Mr. Winkle and I did.

Q. Did you see any signs anywhere in this vicinity stating that parking was prohibited? A. No. No.

Q. Did you at any time hear any police officer give an order to leave the area? [138] A. No, not until later on. Not until—

Q. You did at some point in time hear a police officer give an order to leave the area? A. Yes. After Mr. Colten was apprehended.

Q. After he was apprehended? A. Yes, after he was apprehended. That's when I heard it, yes. Do you mean a general order? A general order?

Q. I'm asking you if you heard any policeman give any kind of order to leave? A. No.

Q. Did you observe during this time that you were there the nature of the traffic on the road? A. There was no traffic.

Q. You observed that there was no traffic? A. There was no traffic at all. We were the last cars to leave the airport.

Q. You stated before that the policeman, I think you said sort of lept over the car Would you describe what you saw? A. Yes. Mr. Colten and Mr. Winkle and I were standing and just kind of observing, and seemingly to me out of nowhere this man came across the hood of the car and just, you know, kind of like leaped over and said, "And, you, loudmouth, I've had enough of you for today." I just kind of stood there, in awe.

Q. To whom was he addressing this? [139] A. Mr. Colten.

Q. Did he continue to address himself to Mr. Colten? A. Yes. Yes, he told Mr. Colten that . . . that he had had

enough of him for today and to get his hands out of his pocket, and when Mr. Colten took his hand out of his pocket this particular patrolman grabbed it and like put it behind his back and I guess an armhold or something, whatever you call them and proceeded to kind of—And at the same time Mr. Colten was like backing up, you know, and the patrolman said, "Well, are you going to leave now?" And, of course, by this time Mr. Colten was like back against the fence and couldn't leave if he wanted to.

Q. Are you stating that while the patrolman was holding Mr. Colten by the arm he asked if Mr. Colten would leave? A. Yes. Exactly.

Q. Did the patrolman say anything else to Mr. Colten, if you can recall? A. Not that I can recall, except that when he said, "Are you going to leave now," Mr. Colten replied, "I want to leave but I want to help these people," and I believe, if I'm not mistaken, I believe the patrolman said something to the extent of, "Don't be concerned with these people, they're not your concern."

Q. Do you recall whether the patrolman at any [140] time made any reference to Mr. Colten's activities prior in the day? A. No, only when he said he had had enough of him that day.

Q. I'm sorry, what was—? A. Only when he had stated earlier that he had had enough of him for today, so I presumed . . .

MR. MOLONEY: Objection to what she assumed.

THE COURT: Overruled.

MR. GOLDMAN: Did your objection go to "presume?"

MR. MOLONEY: What she assumed.

Q. Would you restate what you heard the patrolman say?

THE COURT: I think I've heard that.

MR. GOLDMAN: All right, Your Honor, we will continue.

Q. The patrolman had Mr. Colten by the arm and then what happened? A. As I said, he backed him against the fence and then their conversation took place, and then he

kind of pushed Mr. Colten toward the road and then onto the road, where several policemen, like one county policeman that I [141] remember specifically—I don't remember his name—said, "Bring him over here, we'll be glad to have him," and then they just kind of had a free-for-all.

Q. They had a free-for-all? Would you describe what you saw? A. I saw one particular policeman hit Mr. Colten on the head and I saw another one do something to his face, although I don't know what. I mean like I didn't see a blow being struck or anything, but I saw his hand go toward his face and then I saw Mr. Colten fall, and that was all I saw.

Q. Did you hear any remarks or sounds coming from Mr. Colten? A. Yes, he was yelling. I would have yelled too.

Q. You say he was yelling, Was he yelling words? A. Yes. He said, "Oh, my head; oh, my head."

Q. Did he make any other sound? A. Moaning, I suppose. No, I don't remember that.

Q. Did you hear any sounds that you would describe as sounds of anger or sounds of pain, or how would you describe them? A. Just pain. Just pain. I knew he obviously had hurt his head. Obviously, it looked like.

Q. Where were you standing during this time? A. Still up by the fender of the car.

Q. Did you at any time hear the officer who grabbed Mr. Colten by the arm say to Mr. Colten, "You are [142] under arrest," or words to that effect? A. Never. Absolutely not.

Q. Did you at any time hear any other officer tell Mr. Colten that he was under arrest or words to that effect? A. No, never.

Q. When Mr. Colten and the police officer were talking to each other before Mr. Colten was brought to this other group of officers, would you describe the tone of voice and gestures used by Mr. Colten? A. He used no gestures because he couldn't, but his tone of voice, he was certainly soft spoken—in fact, to the point that I knew that he was

trying to be extremely nice, not to get angry or whatever—he was very nice and said, "Yes, I would like to leave but I'd like to help these people."

Q. Could you describe the tone of voice and manner of the police officer who grabbed him by the arm? A. Very hostile.

Q. Could you describe more specifically what causes you to—? A: "Are you going to leave now, loudmouth!"

Q. That was the tone of voice he used? A. Yes. Yes.

MR. GOLDMAN: That's all, Your Honor.

[143] CROSS EXAMINATION

BY MR. MOLONEY:

Q. Miss Phillips, how many other people were in Mr. Winkle's car with you? A. There were four of us all together.

Q. What kind of car does he drive? A. It's a Volkswagen.

Q. It was crowded? A. No, not crowded. We could have taken one person in the back seat.

Q. And you stated that you stopped when you saw Mr. Mendez being pulled over to see if you could render any assistance, is that it? A. Yes.

Q. What kind of assistance were you going to render? A. We were going to take a person out of his car with us.

Q. I see. You say nobody was in Mr. Colten's car with him? A. I didn't see anybody.

Q. You never saw Mr. Colten stand on the road, though, while you were out there? A. No, I did not.

Q. Was he in your sight the entire time you were there? A. Yes.

[144] Q. Did you see anybody stand on the road? A. None but the policemen and later on . . . .

Q. Later on what? A. Later on after Mr. Colten was apprehended and beaten so, if you want to put it that way, I saw a girl get out of somebody's car, I don't know what or whose, but anyway, she got out of somebody's car to go help Mr. Colten.

Q. Did you see anybody else out of the cars out there at that time? A. No.

Q. Did you see any other cars other than the four cars lined up there which you have identified as Mr. Mendez', the State Police car, Mr. Colten's car and Mr. Winkle's car? A. There was a car ahead of Guy Mendez' car.

Q. Just one car? A. That I remember, yes. Kathy Plant's car.

Q. No more than one? A. I don't think so.

Q. Could there have been cars further down the road? A. There could have been.

Q. You stated that the police were parked in the middle of the road, is that correct? A. That's correct.

[145] Q. Why were they parked in the middle of the road?

MR. GOLDMAN: Your Honor, I object.

THE COURT: If she knows, she may answer.

A. I guess they wanted to be near the scene, so to speak.

Q. Was there anything preventing them from pulling over to the shoulder of the road? A. Yes. We were on the shoulder of the road.

Q. You were on the shoulder of the road, so they couldn't pull over onto the shoulder of the road because you all were on the shoulder? A. Seems like that might be it, I guess.

Q. Did I understand you to say there was no traffic whatsoever at this scene? A. Not at all.

Q. You were the last people to leave the airport? A. That's correct.

Q. What had you gont out to the airport for? A. We wanted to say good-bye to Mrs. Nixon.

Q. Say good-bye to her, that's all? A. (witness nodded head affirmatively.)

Q. Did you know Mr. Colten prior to the time that you went to the airport on March 3rd? [146] A. Yes.

Q. In what connection? A. We're friends.

Q. Let me ask you, Miss Phlipps, did I understand you to say that after this patrolman leaped over this car and

grabbed Mr. Colten, Mr. Colten was backing up away from him? A. He backed up because the patrolman was . . . oh, what's the word I want to use? Walking toward him. Not like walking toward him but like—what's the word? Not threatening. Just kind of pushing him like.

Q. He already grabbed him and he was still pushing him, is that it? A. Not pushing exactly. I can't think of the word I want to use. Like . . . I can't think of the word. Kind of a threatening manner.

Q. Had he already grabbed hold of his arm? A. No. No, not until he said—

Q. Mr. Colten still had his hand in his pocket? A. Yes, he had his hand in his pocket, yes.

Q. You have stated that you saw a bunch of policemen surrounding Mr. Colten? A. That's correct.

Q. Do you know who they were? A. Only a couple on sight. No, I don't know, I don't recollect any names, no.

[147] Q. Was the policeman you saw, I think you indicated that according to your memory you saw a policeman grab Mr. Colten or put his hand up toward his face? A. Yes. That was the county policeman, a large man.

Q. That wasn't the State Policemen? A. No, that particular one was a large man. I saw a State Policeman hit him on the head.

Q. Who was the State Policeman? A. I don't know.

Q. Was that the arresting officer? A. It possibly could have been.

Q. But you don't remember? A. It's not that I don't remember. I don't know his name.

Q. Well, was it the officer who, according to your testimony, leaped over the hood of this car? A. Most likely.

Q. Most likely, but you're not sure? A. No, because they all look alike to me.

Q. I see. Was it your testimony that this policeman, after he leaped over this car, said to Mr. Colten, "I've had enough of yoy today, loudmouth?" A. Was it that policeman?

[148] Q. No, is that your testimony? Is that what happened? A. The arresting officer, if supposedly he arrested him, say—?

Q. No, excuse me, Miss Phlipps, you didn't understand my question. A. No, I didn't.

Q. Was it your testimony that a policeman leaped over the hood of the car and said, "I've had enough of you, loudmouth?" A. Yes.

Q. To Mr. Colten? A. Yes.

Q. What was Mr. Colten doing at that time? A. Standing there looking around, saying absolutely nothing.

Q. He hadn't been saying anything the entire time you were there, is that it? A. Nothing loud at the time that we were parked there, no.

Q. How close were you standing to Mr. Colten the entire time? A. Within three feet at all times except when he was on the road with the policeman.

Q. I see. Were you with Mr. Winkle? A. Yes.

[149] Q. The entire time? A. Yes.

Q. Were you ever with Mr. Winkle in the grassy area off to the side of Mr. Colten's car, some 20 to 25 feet away from that car? Maybe if I indicated—? A. Yes, please, if you don't mind.

Q. Were you ever with Mr. Winkle in this genera area A. No.

Q. Well, if Mr. Winkle says he was in that general area with you, he's wrong, isn't he? A. I don't remember being there. It seems to me like most of my time was spent up by the patrol car.

Q. When is the last time you and Mr. Winkle and Mr. Colten got together and reviewed your testimony today? A. And reviewed our testimony today?

Q. Yes. Reviewed what you were going to testify about today? A. The last time I saw Mr. Winkle was Friday, here in court.

Q. When was the last time that you and Mr. Winkle and Mr. Colten and the other witnesses—? A. Oh, Thursday before we went to trial, all of us got together with the defense attorneys.

Q. To kind of recall what you all were going to [150] testify about? A. No. To recall what we had seen.

Q. All of you got together in the same room? A. Certainly.

Q. Kind of exchanged views on it, is that it? A. If you want to call it exchanging, yes.

MR. MOLONEY: That's all.

REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Miss Phlipps, did you see whether there was a shoulder on the other side of the road?

MR. MOLONEY: I think this is improper redirect.

THE COURT: It is. That's new direct examination.

MR. GOLDMAN: Your Honor, there was a question on cross with respect to the cars not being able to park anywhere but in the middle of the road.

THE COURT: All right, go ahead. Just move it along a little faster.

Q. Do you recall seeing whether there was a shoulder on which a car could park on the other side of the road? [151] A. No, sir, I'm sorry, I don't.

Q. Did you see whether there were any cars parked on the opposite side of the road? A. There were no cars parked on the opposite side of the road.

Q. When the troopers had Mr. Colten, were any of them facing you? Could you see their faces? A. No.

Q. The area that the prosecutor indicated on the grass, some 20 feet, I think he described it, away from Mr. Mendez' car, could you have passed through that area in the course of waoking from Mr. Winkle's car to—? A. That would be the only time. That would be the only time because I don't remember ever standing that far away from the patrol car except when we got out of our own car.

Q. What instructions did you receive concerning the testimony you are to give today? A. No instructions.

Q. Were you told whether you should tell the truth? A. Yes. Yes. Yes, always to tell the truth.

Q. What instructions, if any, did you receive concerning any differences in the recollection of the events between you and the other people who were present? A. Only that everyone was standing in a different position and we all see things differently. We all notice [152] other things.

Q. And you were instructed to try to conform your testimony? A. No. Just to give it as we saw it.

MR. GOLDMAN: That's all.

GUY M. MENDEZ III, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MRS. WILSON:

Q. Would you give your name and address for the record, please? A. Guy M. Mendez III, 663 South Limestone, Apartment 2.

Q. Are you a student at the university, Mr. Mendez? A. Yes.

Q. On the afternoon of March 3rd, following the Nixon demonstrations, when you were returning from the airport, can you tell us what happened? A. Well, I pulled out off the grassy area, and hadn't gone more than 50 or 100 feet when I noticed a police car in my rear view mirror signaling me to pull over, so I pulled over and Officer Miller came up to my window and told me that he was going to tow the car in, the plates were expired and all that.

[153] THE COURT: Keep your voice up, now.

Q. Did he tell you he was going to tow the car in? A. No, not at that exact minute. He explained, you know, why he pulled me over, and . . .

Q. That your plates were expired? A. Right.

Q. You were sitting in the automobile at this time that he told you this? A. Right.

Q. What happened next, Mr. Mendez? A. Well, Officer Miller told me to get out of my car and come back in his car, so I had pulled over on the side of the road, and I got out and left the people that were in my car and went and sat with Officer Miller.

Q. How many people were in your car, Mr. Mendez? A. Five, I believe.

Q. Five including yourself? A. Including myself.

Q. Including yourself? A. Yes.

Q. Did those five get out of the automobile? A. No.

Q. They stayed in the car? A. Right, except when they had, you know, Officer Miller said they had to leave and get other rides, [154] and then, of course, they left.

Q. Did you see the defendant Colten during the period of time when you were leaving your automobile and walking back to the trooper's car? A. Well, I first remember seeing him when I was sitting in the car and I was talking to Officer Miller, but I don't really recall seeing him as I was walking back to Officer Miller's car.

Q. At the time that you were sitting in Officer Miller's car, what side were you sitting? A. Sitting on the right hand side, the curb side.

Q. On the inside of the passenger's side of the automobile? A. Right.

Q. In the front seat? A. Yeah. Right.

Q. Where did you see Mr. Colten at that time? A. On my right along the shoulder.

Q. Was he in the road? A. No.

Q. Did you at any time see him in the road? A. Later wh n the police brought him behind the van.

Q. Did you speak to Mr. Colten? A. No. I was very confused at the time. I was trying to pay attention to Officer Miller and don't remember [155] any real conversation. I might have mumbled something, you know, about—I did tell him they were towing my car or that they pulled me over and were going to tow it.

Q. And Mr. Colten spoke to you at some time while you were seated in that side of he car? A. Right. He wanted to know what happened or "what's going on."

Q. He asked you—I beg your pardon? A. "What's going on," I think.

Q. He asked what was going on and you mumbled something quickly? You were busy with Officer Miller? A. Right.

Q. Approximately how many people were around in the immediate vicinity of the automobile at that time? A. Around the vicinity—in cars and—?

Q. No, out of the automobiles, standing around, walking around? A. When I was sitting in Officer Miller's car?

Q. Right? A. There were four, I'd say, at the most, students, and I noticed a gathering of policemen suddenly appeared.

Q. Can you approximate how many officers were there? A. Six, seven, eight.

Q. Were you aware of any police cars in the road? [155] A. Yes, the van that they put Lew Colten into was parked in the road, almost parallel with my car which was ahead of Officer Miller's car.

Q. Were you aware of any "no parking" signs in the area where you pulled over? A. No, I wasn't. There was a large number of cars in that area, not only student demonstrators but Young Republicans and people of that sort.

Q. Did you see Mr. Colten apprehended by the police? A. On the side of the road?

Q. Yes? A. Yes.

Q. Where was he standing at the time that he was taken into custody by a police officer? A. Well, he was standing on my right, and suddenly a police officer had Lew's arm behind his back and began pushing him in front of the car I was sitting in, over towards the van and another group of four or five policemen, I guess.

Q. Mr. Mendez, could you hear what the police officer and Mr. Colten were saying? A. Lew was saying, "Let me go," or something of that nature, and I just heard, you know, voices. I really, you know, don't have any clear recollection of what he was saying.

[157] Q. Mr. Mendez, are you a close friend of Mr. Colten? A. Oh, I'm a good friend. I don't know, you know, it depends on your definition of close friend. I've only known him for about a year now, I suppose. Half or three-fourths of a year. Yes, I'm a, you know, friend, close friend if you want to call it that. I like him.

Q. After the police officer took Mr. Colten into an armhold with his arm behind him and marched him toward the road, what did you see? A. Well, as he pushed him up towards this other little group of policemen, suddenly a county policeman got out of the van on the right hand side and just kind of made a beeline towards Lew, and as soon as he got there he reached out and grabbed the left side of Lew's moustache and started tugging on it, and I heard Lew scream and then I saw a fist coming down, Lew falling sort of half way down; and then the same fellow that had pulled his moustache lifts him back up by his hair. Lew was screaming, and I couldn't make out what he was saying, and then they just pushed him on into the van.

Q. Mr. Mendez, was there—You testified that you had pulled off onto the shoulder of the road on the right. Was there a shoulder of the road on the left? A. On the opposite of the road, yeah, I believe so because as I was coming in, I noticed a friend of mine [158] had been pulled over also for not having his new license plates.

Q. At the time you're testifying to, the incident to which you are testifying, was anyone parked on this shoulder on the other side of the road? A. Not that I recall.

MRS. WILSON: That's all.

CROSS EXAMINATION

BY MR. MOLONEY:

Q. Mr. Mendez, you indicated that you really didn't recall talking to Lew Colten because you were trying to pay attention to Trooper Miller, is that right? A. That's right.

Q. Was Mr. Colten interfering with you paying attention to Trooper Miller? A. No, not at all. He was simply asking, you know, what was going on, and I tried to tell him the best I could that my car was being towed away.

Q. Did you see Mr. Colten alongside your car prior to the time you went back to Trooper Miller's car? A. Yes. Yes.

Q. The first time you saw him was up there on the driver's side of your car then, wasn't it? A. Right.

Q. Did I understand you to say that you noticed the police car in your rear view mirror? [159] A. Right. When I pulled off, I had seen it sitting still over there, and when I pulled off, I, you know, just a natural glance in my rear view mirror and I–

Q. The rear view mirror, right here, the one inside the car? A. Yeah.

Q. He was behind you? A. Right, with the flashing light, you know, it can't help but catch your eye.

Q. All right. A. If you've got a good eye.

Q. Mr. Mendez, was your license place expired? A. Yes, it was.

MR. MORONEY: Thank you, that's all.

REDIRECT EXAMINATION

BY MRS. WILSON:

Q. Mr. Mendez, one more question. Did Trooper Miller complaint to you during the interval that you were sitting in the car about Mr. Colten's interfering with the process of giving a citation? A. No, he did not.

MRS. WILSON: Thank you.

[160] THE COURT: We'll take a short recess at this time. We'll be in recess of Court for about 20 minutes.

Following the foregoing recess the defendant was present in open court and represented by his counsel, and the evidence for the defendant continued to be presented.

GARY LEE SEALE, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Please state for the record your full name and address. A. My name is Gary Lee Seale, live on 820 Malabu Drive.

Q. Would you spell your last name for the recorder, please? A. S-e-a-l-e.

Q. On the afternoon of March 23rd did you leave Blue Grass Field in Mr. Colten's car? A. Yes, I did.

Q. How did you come to be in Mr. Colten's car? A. Well, I was out of a ride. I came over with somebody else

and Lew asked me if—asked the people around if anybody needed a ride and I said, "Yes," so I got with him.

Q. Did you know Mr. Colten at that time? A. No, not personally.

[161] Q. Would you say that louder, please? I didn't hear it. A. No, not personally.

Q. Not personally? Who else got into the car besides you and Mr. Colten? A. James Germalick.

Q. Was there anyone else in addition to Mr. Colten, Mr. Germalick and yourself? A. No, there wasn't.

Q. Where did you sit in the car? A. The back seat.

Q. Where did Mr. Germalick sit? A. Front seat.

Q. Was there room for any additional passengers in that car? A. Yes, there was.

Q. Approximately how many? A. About three, possibly four.

Q. As you were leaving the airport in that car did Mr. Colten pull the car over to the side of the road? A. Yes.

THE COURT: I think maybe we might proceed if we let him tell the story, whatever it is.

MR. GOLDMAN: Yes, Your Honor.

[162] Q. Would you describe what you remember taking place there? A. We just left a parking lot and we were driving down the road, and we noticed that one of the other cars had been pulled over and so we pulled up behind the officer's car and parked. Lew got out and went forward to find out what was going on, and a little while later several police officers came by and stopped, and they got out and one was talking to Lew and asking him to leave.

Q. Where was Mr. Colten and the police officer at this time? A. They were at the side of the road, toward the grass.

Q. Would you go to the board, please, and point out where they were? Let us assume that the yellow vehicle is the police vehicle. A. Oh, they were standing right here.

Q. Would you get to the other side so the Court can see where you're pointing? A. Yes.

Q. Approximately at the right front fender of the police vehicle? A. Yes.

Q. About how far away from it would you estimate? A. Three feet.

Q. Be seated again, please. Where were you at [163] this time, sir? A. I was still in Mr. Colten's car. I was in the back seat.

Q. Was the windows open or closed? A. Open.

Q. Could you hear Mr. Colten saying anything? A. No, I could not hear Mr. Colten.

Q. Did you observe his conduct? A. Yes.

Q. How was he conducting himself? A. He was calm.

Q. Was he talking— Did he seem to be talking to the police officer? A. Yes, he was talking, but he was too low, I couldn't hear what he was saying, and he was gesturing a little bit.

Q. Could you hear the police officer? A. Yes, I could.

Q. What could you hear the police officer say? A. He was asking him if he was going to leave.

Q. In words what do you recall him saying? A. "Are you going to leave?"

Q. Did you hear the police officer address Mr. Colten in any particular way? A. Just asked him to leave.

Q. Did you at any time get out of the car? [164] A. Yes.

Q. What caused you to get out of the car? A. The officer grabbed Lew and was taking him off. I got out of the car at that time to start taking pictures.

Q. You had a camera with you? A. Yes.

Q. And why did you take pictures? A. Well, I had hopes of being a photographer and that was my purpose for being there, and I thought that would be appropriate.

Q. And how many pictures did you take? A. Three.

Q. Did you hear the officer say anything further to Mr. Colten after he grabbed him? A. No, I didn't.

Q. What did the officer and Mr. Colten do then? A. The officer grabbed his arm and pinned it behind him and was taking him off, and at that time I was proceeding to

get out of the car, and so I got out and started taking pictures, and at that time several other officers were coming over, helping– the paddy wagon drove up and one of the officers jumped out of the car at that point.

Q. Did you hear that officer say anything? [175] A. Yes. He said, "We'll take care of that one."

Q. Was there any characteristic tone in his voide? A. Just like he was glad. Glee, you might say.

Q. Glee, did you say? A. Yes.

Q. Was there any particular expression on his face? A. Yes, he was grinning.

Q. He was grinning? Did you observe anything further happen to Mr. Colten? A. At this time I was taking pictures and I could not really see what was really going on. I just heard Lew screaming like he was in pain or something like that, and then the last thing I saw they were putting him into the wagon.

Q. While you were either in Mr. Colten's car or out on the grass did you observe the conditions of traffic? A. I was not paying any attention to it.

Q. Did you observe whether there were any signs on that side of the road that said "no parking" or words to that effect? A. Yes, sir.

Q. What did you observe? A. Signs that said "no parking."

Q. Where were they? A. They were on the right side of the road.

[166] Q. On the right side of the road? A. Yes.

Q. Could you go to the board and show approximately where they were? A. No, I couldn't. I just remember seeing signs.

Q. You remember seeing them in the area where you were parked? A. Just along the road. I couldn't pinpoint the exact location of the signs.

Q. Did you see them going to the airport or coming back?

MR. MOLONEY: Your Honor, he's already testified he saw them on the right side of the road and you're talking

about leaving the airport. I think it's obvious where he saw them.

MR. GOLDMAN: Well, Your Honor, it depends on which direction you're traveling in as to which is the right side.

THE COURT: Were they on the side where you were parked? A. I saw the signs on the way to the airport, on the right.

[167] Q. So that the signs were opposite the side of the road that Mr. Colten's car was on? A. Yes.

Q. Did you notice whether there were any people, any civilians in the road during the time that Mr. Colten's car was pulled over to the side? A. No, I didn't.

Q. You say you did not? Do you recall that there were no people in the road or you cannot recall whether or not there were? A. I just can't recall seeing anyone.

Q. Did you see any groups of people other than police officers? A. I saw one or two people maybe walking around.

Q. And where did you see them walking? A. They were on the side of the grass, on the right side of the cars.

Q. How many police officers did you see in that area? A. On the grass?

Q. Generally? A. Just in the area of the cars?

Q. Would you describe how many officers you saw and where you saw them? A. Five to six, six or seven possibly.

[168] Q. And where did you see them? A. They were all around, different places.

Q. Any in the road? A. Yes, there were some in the road.

Q. Any on the grass? A. The arresting officer was on the grass.

MR. GOLDMAN' Nothing further, Your Honor.

CROSS EXAMINATION

BY MR. MOLONEY:

Q. Mr. Seale, what was the purpose of you going out to Blue Grass Field on March 3rd? A. Well, I'm a photographer.

Q. For who? A. I'm an amateur photographer and I was going out to take pictures of the events, and working on building up a portfolio, and I'm interested in photo journalism.

Q. I see. Did I understand you to say that you knew Mr. Colten but not personally on this day? A. I had just seen him around.

Q. Did you know him by reputation or something? A. No, I had just seen him down town previously and seen him around.

Q. You knew what his name was? A. No, not at that time.

MR. MOLONEY: You didn't? [169] That's all.

THE COURT: What pictures did you take? A. I took a picture of from the time that the officer grabbed him and started him along.

THE COURT: Do you have the pictures with you? A. Yes. One picture I did not bring.

(The Court examined some photographs but they were not introduced as part of the record.)

GENNELLE GEIS, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GOLDMAN:

Q. Would you please state your name and address? A. My name is Gennelle Geis, and I live at 332 Aylesford Place.

THE COURT: You're going to have to talk louder than that.

Q. Would you repeat it, and louder, please? A. Okay. My name is Gennelle Geis, and I live at 332 Aylesford Place.

Q. Would you spell both your first and last name for the record, please? [170] A. Okay. My first name is spelled G-e-n-n-e-l-l-e and my last name is G-e-i-s.

Q. On the afternoon of March 3rd were you at Blue Grass Field? A. Yes, I was.

Q. Would you describe how you left Blue Grass Field, with whom, and what happened as you were leaving Blue Grass Field? A. Well, we were over there because Mrs. Nixon—

Q. Would you speak louder and more directly into the microphone, please? A. All right. We were over there because Mrs. Nixon was leaving and we left the parking lot, and I don't know who I was with, I didn't know the driver of the car, and we saw that Guy Mendez had been pulled over so all of the cars pulled over because we were wondering what had happened, and so then a few people got out of the car and I was one of the people that got out of the car to go see what was happening, and we walked up to—Do you want the whole thing?

Q. Well, continue. A. All right. So we walked over to Guy's car, and so George looked—this girl who is in one of my art classes, she said, "Don't leave us," you know, see what was going on, "Don't leave us here."

[171] Q. This was a passenger in Mr. Mendez' car? A. Yes, and so by that time this policeman, kind of young looking, very tall, and he looked at me and said, "Would you leave, please?" And I asked him, I said, "What is going to happen to these people in the car?" And he said, "Well, I don't care, let them walk." So I turned around and by that time I heard Mr. Colten screaming, and so then I turned around and I saw these policemen hitting him and he fell on the ground, and they picked him up again and then they threw him into the paddy wagon.

Q. Was that the first time you saw Mr. Colten? A. No, I saw him at the demonstration.

Q. I mean the first time after arriving in the vicinity where the cars were parked? A. That was the first time I clearly saw him. The other time I saw him, I got up there kind of soon and they were taking Guy into the policeman's car to talk to him, I guess, about his license plate, and I saw Mr. Colten in between the cars on the gravel, but I didn't see very much what happened.

Q. Did you see any officers speak to Mr. Colten? A. I saw a policeman speak to him, but I did not hear what happened, and I'm not, you know, really sure.

Q. Where was Mr. Colten at that time? A. Mr. Colten was either between the cars or [172] on the other side of the cars, I'm not really sure on this because when I saw the policeman speaking to him, another policeman was talking to me, and I really was paying more attention to what the policeman was saying than what Mr. Colten and the other policeman were saying.

Q. Would you be able to describe this policeman you saw speaking to Mr. Colten? A. Not really.

Q. Do you know whether he was the policeman who brought Mr. Colten toward the police wagon? A. I really don't know because when I saw Mr. Colten being hit there were three policemen and I didn't see.

THE COURT: You're letting your voice drop down. A. Oh. Okay. Well . . .

Q. Did you hear anything that was being said to Mr. Colten? A. No, I didn't.

Q. Did you hear anything from Mr. Colten other than the screams which you previously described? A. No.

Q. Did you notice whether there were any signs on the side of the road where the cars were which said "no parking" or words to that effect? A. No, I didn't.

[173] Q. Did you see any people other than policemen in the road at any time while you were at this scene? A. Well, the only time I saw anyone else in the road was when they had drug Mr. Colten into the paddy wagon, and that's the only time.

Q. Can you recall what the conditions of the traffic on the road were during this time? A. There was no traffic at all that I saw. I didn't see any at all.

MR. GOLDMAN: That's all, Your Honor.

CROSS EXAMINATION

BY MR. MOLONEY:

Q. Miss Geis, when did you leave the parking lot at the airport? A. You want a time, about?

Q. No, just as soon as the demonstration was over? A. Yes, just about. You know, it took awhile to get into the cars and things like that, but it was very, very soon after.

Q. Everybody left at the same time? A. Just about.

Q. Did I understand you to say that all the cars pulled over? A. I don't think all of them did. I'm not really sure because I'm not even sure how many people were [174] there or how many cars were there.

Q. How many cars pulled over to the side of the road? A. I really have no idea because—

Q. Five? A. I would say it was between . . . I know there weren't more than ten. I'm almost positive not more than ten. It could have been between ten and seven, ten and six, I really don't know.

Q. These were the cars in which the individuals who were at the demonstration were in? A. I imagine they were all at the demonstration.

Q. Did you go back to Mr. Mendez' car just as soon as you stopped? A. Yes, I got out of the car.

Q. How did you go back there? A. I got out—I was sitting on the left hand side—no, on the right hand side of the car which was facing towards the grass. I got out on that side.

Q. Did you go up on the grass or on the road? A. On the grass.

Q. Did I understand you to say that you saw—You weren't sure whether Mr. Colten was between the cars or on the other side of the car? A. Well, you see, it all happened within a space [175] of about five to seven minutes, and during that time the policemen were coming toward me, and when you're in that kind of situation you don't pay that much attention to the other people around you.

Q. Were you on the grass or on the road? A. I was on the grass.

Q. Never on the road? A. No.

Q. Did the individuals in these other seven to ten cars get out and come up there? A. No. Not that many peo-

ple really came up. Like out of our car there were only two people went up there.

Q. Everybody else just sat in the car? A. A lot of people were in the cars, yes. It was like everyone was sending a delegate to see what was going on.

Q. Everybody sent a delegate up to find out what was going on? A. Well . . .

Q. Two out of your car? A. That was just an analogy.

Q. Were you there when the police first pulled up? A. Which one?

Q. Well, I'm assuming you were not there when the policeman pulled Mr. Mendez over? A. No.

[176] Q. Were you there when the—?

MRS. WILSON: Let her answer the question, please.

MR. MOLONEY: I thought she had.

A. Well, I wasn't there when the policeman pulled Mr. Mendex over because, you know, because that's why the other cars pulled over.

THE COURT: You're letting your voice drop again. The court reporter can't even hear you.

A. Okay. That's why the other cars stopped, so when . . . I really only saw two other policemen cars pull up, so then . . .

Q. Where did they pull up? A. One pulled up right next to Guy's car. Well, I think the other one pulled up first. I'm almost positive of it because the paddy wagon came in like this.

Q. Were you there when those cars pulled up? A. Yes. Yes.

Q. Where were you? A. I was right next to Guy's car. That was about the same time George looked at me and said, "Don't leave us."

MR. MOLONEY: That's all.

THE COURT: How many in the cars had gone up around Mendez' [177] car. A. In front of Guy's car.

THE COURT: Around his car. A. Around his car? You mean passed it and pulled up?

THE COURT: How many were in the vicinity of his car? A. How many people?

THE COURT: Yes. A. Oh. . . .

THE COURT: Not counting police officers.

A. It didn't seem like there were more than ten or 15 people, but I really . . . I really don't know for sure.

THE COURT: You say the police officer approached you and I assume kind of frightened you a little bit. A. Well, he was really very rude and I, you know, it really kind of scared me because like I couldn't understand why . . . because when I asked him, you know, I was really concerned about the people because Blue Grass Airport is really a far way out, and I looked at him and said, you know, "What about these people in the car?" And he said, "Well, just let them walk."

[178] THE COURT: Did he ask you to leave? A. Yes, he did and that's when I turned around because he looked like he was going to hit somebody.

THE COURT: Did you hear him ask the others to leave also? A. Now, that police officer didn't ask anyone else to leave.

THE COURT: Did you hear the police officers ask anyone else to leave? A. Not really. It was more like in, you know, separate police officers confronting separate groups. You know, I think it looked like there was one police for every person that was there, ans so it was really. . . .

THE COURT: How many policemen were there approximately? A. It looked like there were about ten. I really don't know for sure how many policemen were there.

THE COURT: All right. Step down.

Thereupon both sides announced closed.

[179] THE COURT: Do you wish to make a statement?

MRS. WILSON: Yes, sir.

I think first we want to thank the Court for what to the layman would probably have been a monumental amount of time devoted to a disorderly conduct charge. Of course, most people would regard this as fairly insignificant. I hope that we can demonstrate that this case is a whole lot more important than the $10.00 and costs fine or than the charge of disorderly conduct itself.

From the statute of disorderly conduct, I think we have learned that there are two elements which must coalesce in order to find Lew Colten guilty of disorderly conduct.

First we must find him guilty of the specific acts of conduct which are described in the three sections which we have already outlined as applicable to this particular charge. That is, he must be found guilty of having obstructed vehicular or pedestrian traffic, or having congregated with other people in a public place and having refused to comply with a lawful order of the police to disperse, or of having created a hazardous or physically offensive condition by any act that served no legitimate purpose.

Additionally, we must find the element of the intent to cause public inconvenience, annoyance or [180] alarm.

We've already gone into the constitutional overtones of this particular statute. I think we have argued for His Honor the argument of overbreadth and void for vagueness, and we particularly say as to the overbreadth argument this is terribly important to an interpretation of the required intent. It is certainly necessary, if this statute is not to be unconstitutional, because of the intent to cause public inconvenience, annoyance or alarm, it is necessary that that particular section be construed very narrowly and be given the most strict interpretation.

We do wish to remind His Honor of those arguments and to incorporate them into the closing argument that we want to give now. We would also like to take the opportunity to clarify the New York State, which the prosecutor cited, that was—in his argument earlier—that was People v. Kagin. This was a case which arose in the lowest court, the lowest criminal court in New York. It did not go any higher. It was a case which arose under the disorderly conduct statute identical to the one which Kentucky has—the New York statute from which Kentucky took its statute, present statute. It involved a week long demonstration of a large group of people, and the announced purpose of that demonstration was to bring to a complete halt the operation of the Selective Service System in New York.

[181] The induction center in New York is in Lower Manhattan at the base of the Wall Street area and in a very busy section of New York City. The defendant in the Kagin case, in the words of the court, "solicited, requested and importuned a large group of people to march in the street without getting the required parade permit." They did march in the street at his behest and they blocked traffic at approximately ten minutes of seven on a working day in this section just below Wall Street, at a time when the evidence showed that close to a million or more people passed into the Wall Street area to go to work.

I think that there can be no question at all but what in the case which the prosecutor cited there was an actual fact of obstruction and blocking of traffic, and that this is a whole lot closer to the situation which the disorderly conduct statute must envision if we are going to construe it in its narrowest fashion.

There are, however, a few other New York cases which have arisen under this statute which should be helpful to this Court in interpreting the statute. There is the case of the People v. Smith which arose in the New York Court of Appeals—which went to the New York Court of Appeals. In that case two police officers in the very early hours of the morning had placed a man [182] under arrest. They had arrested him, and in the process of arresting him had injured him. He had been injured. The police were in a parking lot in the wee hours of the morning, ministering to thisinjured man, when the two defendants, one of whom had apparently been drinking, came to the parking lot, saw the police, went up and said to them, "What's going on around here?" A crowd of approximately 25 or 30 people quickly gathered in the parking lot, with two policemen in the dark of night. The police ordered the defendants to move on and the defendants started to move on, but then they drifted back and the crowd of 25 to 30 people drifted back with them.

There were two charges placed against the two defendants. One was a charge that they had refused to obey an

order of the police to move on and one was a charge under another New York statute that they had caused a crowd to collect. The lower court dismissed the charge about refusing to obey the police order to move on, and the New York Court of Appeals subsequently threw out the second charge about causing the crowd to collect.

It seems to me that this was an extremely difficult arrest situation—very different from the present fact case in which a trooper was giving a citation and hauling off a car for expired license plates. There was a real threat. It was late at night. There were two [183] police officers as opposed to the five to twn to 15 police officers who were at this present scene.

They were confronted at the present scene by nothing more than a group, varying in size according to the witnesses, of students. There has been no testimony whatsoever as to any hostility, and it seems to us that this Smith case should give good guidance to the Court.

The second case is a case which went to the Supreme Court in New York County, the People v. Solomono. Now, this is a higher court than the criminal court which we referred to in Kagin but it is not the highest court of New York. The facts in that case we were more remote. The defendants were picketing the Soviet Embassy, and they were asked by the police to keep their picket line on the sidewalk across the street from the Soviet Embassy. They asked permission to move back onto the adjoining sidewalk, they were refused, they did it anyway. When they moved back they were arrested and charged with disorderly conduct under this same statute that we're proceeding under now.

The Supreme Court of New York County held that there was no authority in the police to close the sidewalk completely to the public and peaceful assembly. This was the same right of free assembly which we are arguing which was protected by New York, which we are arguing should be protected in this particular case.

[184] Now, earlier in our—in this case, we referred to a case which came down from the Supreme Court of the United States last week. We have just been able to get a copy of the Law Week Review or advance opinion on that case, and it seems to us to offer very little help in our particular, under our particular facts. In the case of Bachelor v. Maryland, the defendants were involved in a sit-in at an induction center. There was a group of 30 to 40 people. They were sitting in inside the offices, and they were ordered at the end of the day to leave so that the offices could be closed. They refused to leave and they were forcibly ejected by United States Marshalls. They were carried out, and, according to their testimony, left upon the sidewalk in front of the induction center.

They continued to stay there and they, by all the testimony, apparently obstructed a large portion of the sidewalk. They were prosecuted for disorderly conduct amounting to a breach of the peace which is the Maryland statute in question, and they were found guilty by a jury under a general verdict under specific instructions. It was the instructions of the court which were challenged, which caused the verdict to be reversed by the Supreme Court. It seems to us that although there are certain elements of obstructing particular passageways or of refusing lawful order of the police to disperse, [185] this case of Bachelor v. Neal cannot be equated specifically with the particular facts of this case, but even in Bachelor v. Neal, we find the court saying that because of the possibility that the jury may have found the defendants in that case guilty because their views were unpopular or their expressions tended to incite public offense, that the conviction of these defendants could not stand because, as the Court is well aware, this kind of reasoning or such conviction may not stand.

Now we come to the question of what actually did happen on the afternoon of March 3rd. Guy Mendez was traveling with four other people in a small automobile on the Airport Road when he was pulled over by Trooper Miller, who came in behind his car, pulled him over, Guy Mendez pulled over on the shoulder, Trooper Miller pulled over on the shoulder directly behind him.

Colten, the next man in the line, who was traveling with two people in his automobile, and therefore space in his automobile, pulled over to find out what was wrong. It is obvious from the testimony that Colten apparently attempted to talk to Mendez, perhaps attempted to ask him or question him or advise him as to why it might be that his registration really hadn't expired and he might be able to get out from under the charge of expired license plates. Trooper Miller says that the traffic was [186] heavy. This was contradicted not only by the testimony of all of the defense witnesses, who say that this procession or cavalcade of cars was the last group of people leaving the airport, it is also contradicted by Capt. Mayes' testimony. He said, if you recall, that he came out of the turn from the parking area onto the airport access roa some 200 feet up the road and he could see clearly, with no one in front of him, all of the way down to where these cars had begun to pull over. We would maintain that if there was a distance of approximately 200 feet that Capt. Mayes could see, there wasn't a whole lot of traffic rushing in there to fill in this 200 feet gap.

It's also contradicted by Trooper Miller's own statement because he says he was standing in the road with Guy—beside Guy Mendez' car and he would have stayed there longer except for the fact that Colten came along and began to "interfere" with his process of citation. Trooper Miller didn't seem to feel that he was in danger by heavy traffic so that he himself would be causing obstruction if he stayed there on the side of the road.

Trooper Miller describes Lew Colten as having remained in the road area after he got into the car. Trooper Miller tells us that he observed Lew Colten the entire time that he was issuing the citation to Guy Mendez. Frankly, his testimony isn't credible. We would assume that it would be difficult for [187] any trooper in the normal process of issuing a citation, of calling for a wrecker to come and pick up another car, of talking with the man who was going to be given the citation, filling out the forms which he himself

had some 20 items to be filled in, we would assume that it is quite impossible for him to have kept Lew Colten in his vision during the entire time of the episode.

Trooper Miller at no time said anything to any other police officer about needing help in order to write his citation for Guy Mendez. He said nothing to Lew Colten about no parking, he said nothing to anybody about getting out of the roadway: Trooper Miller made no request for help in concerning Lew Colten. Miller did say that he had to take Guy Mendez back to his automobile in order to write a citation, to get away from Lew Colten.

We would submit, Your Honor, that it's far more simple to believe that Trooper Miller was reluctant to write a citation in front of an automobile containing at least five students, where he was leaning over on the side of the road talking to that individual at that particular point; that it was a routine matter for him to say, "Come back into my automobile and we'll talk this over and fill out this form," and that this is what he did, routinely asked Mr. Mendez to leave his car and go back and get into his automobile and take care of the [188] problem of the citation at that point.

Capt. Mayes says that he saw Lew Colten in the group of four or five individuals all standing in the road at the time he drove up—at the time he turned the corner and came onto the airport access road, but he admits that he did not see him there when he told the individuals in the group to get back into their cars. He admits that he was unable to place him in any particular portion of the group between the time that he actually arrived on the scene and the time of the taking into custody by Officer Harlowe.

It's far more likely, after having listened to the rest of the testimony, that Lew Colten, at the time that Capt. Mayes pulled up, was actually over on the passenger's side of Trooper Miller's car, where he admits that he was trying to find out what was going on and whether or not he could be of assistance to the people who were left in the Mendez car. Capt. Mayes said that the problem was that the traffic was being obstructed, that the traffic was very heavy, al-

though, of course, he told us earlier that there was no car between him and Colten some 200 feet up the roadway.

The fact of the matter is that the witnesses agree that Mayes was behind Colten, that there was no traffic to be obstructed until Mayes and Brown stopped the car in the roadway themselves, thereby obstructing any [189] traffic, if there was any, behind them, and all of the witnesses agree that neither Capt. Mayes nor any of the police officers said anything to any of these witnesses about "no parking" signs.

The fact of the matter is that if there had been a complaint of no parking, it seems that the apparent remedy for a no parking violation would have been a citation for parking in a forbidden place. Capt. Mayes didn't give any orders to these people in the form of, "Move your vehicles from this place where there is no parking," or even, "Get off the road." What Capt. Mayes and all of the police officers from this time on said was, "Leave, get in your cars and leave."

Officers Brown and Harlowe then pulled up. Now, they've testified specifically that the reason they started asking people to get back into their cars and leave was that they saw Capt. Mayes doing this. Naturally they moved in to reinforce his argument. There was no testimony from any of these people as to a disorderly conduct basis for the charge or a reason for the request to these people to leave. They testified they didn't have any difficulty driving up to the scene. They were unable to effectively show that there was any heavy traffic in the area. Again they didn't say anything about any "no parking" signs in the area. They didn't direct any drivers to move their cars. All they did was say, "Leave."

[190] Trooper Brown testified that the defendant clearly said, "I want to get these people in the car rides back to Lexington." The other witnesses heard him say the same thing. "Yes, I'm leaving but I'd like to get these people some rides back to Lexington." There has been pretty clear testimony as to the State Police complete lack of con-

cern for whether or not the people in the Mendex car were going to be able to get back to Lexington.

Now, it was therefore Trooper Harlowe alone who confronted the defendant and whose testimony must stand as the basis for the disorderly conduct charge. Officer Harlowe admits that, well, he doesn't remember but he may have called Mr. Colten a loudmouth, although everyone will agree that Mr. Colten's demeanor at the time of the arrest was quite, calm and peaceful, that he was in no way violent, abusive or loud. Mr. Colten's conduct certainly couldn't have been described at that time in words such as, "Loudmouth, I've had enough of you today."

The defense witnesses have testified that Officer Harlowe did address the defendant as "loudmouth" and that he was specifically heard to say, "I've had enough of you today, loudmohth."

Officer Harlowe didn't say anything to Lew Colten about, "Move your automobile." In fact, Officer Harlowe testified that he just presumed that Mr. Colten was driving his own automobile, he didn't know [191] it because he hadn't seen him get out of the car. He didn't know whether it was his car. He didn't say anything to anybody about, "Let's keep off the road and not get in the way of the traffic." All he said was, "Leave," at the same time, according to the defense witnesses, most effectively blocking Mr. Colten's exit.

Officer Harlowe testified quite clearly that he doesn't believe that people that look or dress like Mr. Colten should be out around the Blue Grass Airport at any time. In fact, his testimony was to the effect that Colten, dressed as indecently as he is here today, had no cause to be out in public where good people should be. He found Mr. Colten's person and his appearance offensive. He was a little bit tired of having seen Mr. Colten around at various points during the demonstration. In short, he was annoyed by Mr. Colten, he was offended by him.

Trooper Harlowe told Mr. Colten to take his hands out of his pocket, he immediately, as all the testimony corro-

borates, grabbed him in an armhold lock and proceeded with him to the point at which the paddy wagon and the other officers came into the picture. There is conflicting testimony as to whether Harlowe ever said, "You are under arrest." Mr. Colten, Mr. Winkle and Miss Phlipps, Mr. Seale, all testified that there was no such statement [192] made. In fact, all of the defense witnesses testified that Officer Harlowe grabbed Mr. Colten, put him in an armlock and marched him forward, at the same time repeating his original question, "Are you going to leave now," implying that if Mr. Colten did go on and leave, all would be well.

There is no doubt from the testimony which has been entered into what happened right after that. Officer Harlowe delivered Mr. Colten to the other officers, both county and state, they variously pulled his long hair, grabbed his moustache in order to turn him around, and beat him several times with their fists.

There were shouts of pain which everyone in the crowd heard and which drew their attention to the scene. Now, I suppose you might say, "Now, just how credible are these defense witnesses?" After all, they are all students, they are young, probably they were all buddies, maybe they were all anti-Mrs. Nixon. They were out there for a demonstration, and it's very important that we find that these witnesses did testify credibly.

Let's remember that while some of these witnesses did know Lew Colten before this day and that while some of them were out there to participate in the kind of demonstration that he had been involved in all day, there were key witnesses who had never heard of him, never seen him before this time and didn't know him at all. Particularly Craig Winkle and Gary Seale, who testified very closely as to what they saw from a very close vantage point, two or three feet away from the act during the entire course of the arrest. Craig Winkle had never heard of Lew Colten before this time. He just happened to be on the scene and he came in to testify in court in order to tell what he saw.

Now, let's ask what really did happen. I think there can't be any question but what the police came upon a scene in which there was a crowd of people, small or large depending on your testimony, who were standing around while a citation was being issued to Guy Mendez for expired license plates. The police ordered them to leave. Now, the police weren't really concerned about traffic congestion. If they had been, they would have pulled their automobiles over onto the opposite shoulder on the opposite side of the road, but they didn't. They left their automobiles sitting in the one lane of traffic by which automobiles could proceed toward Lexington. They weren't concerned about congestion. They would have told everybody to move off the road. They might have asked people to move their cars. They would have mentioned the fact that there was no parking along this area.

The truth of the matter is that there wasn't enough traffic to be congested.

Both the police and the defense witnesses agree that Lew Colten was not in the road or even near the road at the time of the actual arrest by Officer Harlowe.

That leaves us to ask why the police ordered the spectators to leave. Probably, Your Honor, the truth of the matter is that the police ordered the spectators to leave because policemen, as a rule, don't like to have people around watching when they are issuing citations or arresting people. Now, there are many reasons for this. The immediate reaction of the police officer when someone comes upon the scene of an arrest or a citation is, "Move on." Why is this their reaction?

Young people and black people will tell you that this is their reaction because the police do not want witnesses to acts of brutality. In the overwhelming majority of cases that suspicion is wrong, but it is there. And because it is there, I think it is very important that in this case, more important than it has been perhaps in earlier times, that the right of peaceable assembly on an occasion such as in these

facts right now not be infringed. It is the only way that we can allay the suspicions of these people—the young and the black particularly.

I think we should remind the Court that the Supreme Court has told us on many occasions that it is not against the law or unlawful for an accused to argue with the police, to challenge the police, or to seem verbally to resist the arrest of the police.

The sad fact in the particular case at hand is that there was just such an audience as the police don't like to have. There was a young, impressionable audience of students who were out there because of political interests. They were at the airport, they saw this, they saw and unnecessary manhandling which may or may not be called a beating by the police of Mr. Colten. Even Officer Brown testified that he heard screams which he said might have been screams of pain.

The key fact in this case is that th police order to leave was a lawful order. The issue is not how many times that order was actually given to Mr. Colten, although we have heard testimony that there was no order prior to Officer Harloew's, if a lawful order to leave was given to Mr. Colten only once, then it should have been obeyed, but if an unlawful order to Mr. Colten was given a hundred times to leave the area, he had no duty to obey.

The order which was given went far beyond the necessity of police work or police investigation and it was not a lawful order. It need not have been obeyed.

Moreover, both officers and defense witnesses have testified that Colten had a bona fide reason which he expressed timely, politely, in a gentlemanly fashion to the police for being there. He had a partly empty car. He felt some responsibility for all of these people who had gone out in this cavalcade together from the university. He wanted to see whether he could get the five people in Guy Mendez' car back to town. The police officers testified that they knew of this reason, and we've heard the testimony of the defense witnesses as to the complete lack of concern.

Briefly let us look at the events of March 3rd on the Airport Road from another angle. Let's ask ourselves would any middle-aged, well dressed adult have been ordered to leave under the same circumstances and in the same way as Mr. Colten was? Would any short-haired, young man in a business suit and shirt and tie have been grabbed by the arm, shoved up toward the road, told by the police to get on his way and never mind about his friends, had his hair pulled and his head beaten under those circumstances?

The truth is that Lew Colten was not arrested for disorderly conduct. Disorderly conduct came into it much later. He was arrested because some police, after a long tense day of patrolling during Mrs. Nixon's visit to Lexington, were uanble to resist the temptation, first to order him about and then to grab him a bit roughly and finally to beat up on the defendant. He's a long-haired, radically dressed individual who doesn't look like we like to think of our middle class college students.

Now, once having lost their professional composure, once having blown their cool, as it does, the police were faced with something they had to have an answer, so they filed a disorderly conduct charge and they hope that a skilled prosecutor would be able to come up with a theory under which they may have charged him with disorderly conduct.

In summation, Your Honor, it seems quite clear that the arrest in question under these facts violated Mr. Colten's right to equal protection under the law. Under both the Kentucky law and the Federal law. The disorderly conduct statute must not, it must not constitute to be used to convict a man under the circumstances in the case at hand.

We ask that you find the defendant not guilty.

MR. MOLONEY: Your Honor, Mrs. Wilson and Mr. Goldman, I hope to be very brief, Your Honor.

Once again the Commonwealth finds itself in the quite unenviable position of having to defend police officers. At

least, this is the way that the defense would have us take this case, but I'm not going to fall for the bait, because the facts are uncontroverted.

Lewis Colten was and is guilty of disorderly conduct. These policemen are not guilty. They're not on trial. Lewis Colten is on trial, and he's the man that the judge must decide whether or not was innocent or guilty.

Now, the cold hard facts of the situation are that Lewis Colten on this day in question, undoubtedly a frustrated individual by this time because he had not gained the attention he desired during the day of demonstrations, came upon the scene where one of his cohorts had been legally arrested by an officer of the law, and he decided he was going to interfere, and according to the testimony of Officer Miller he did. Officer Miller asked him to leave, order him to leave one time. Mr. Colten did not.

Upon the scene came Capt. Mayes. Capt. Mayes specifically stated, and this is not contradicted, it was not contradicted on cross examination and upon the witnesses for the defense being called to the stand, Miss Geis, who I commend for her remarkable memory, said that there were ten or 15 people around that car. She remembers what the facts were, but Capt. Mayes comes upon the scene and he says that he specifically remembers telling this group, and Mr. Colten was in this group, to leave four or five times. He ordered them to leave, and then Capt. Mayes left the scene and went down the road and went to each individual car and said, "Leave, leave, leave," because they had a duty to perform, and their duty was to get that road clear, and who was blocking the road? These individuals gathered around Mendez' car.

Along comes Trooper Brown and Trooper Harlowe. Trooper Brown specifically testified that he told Mr. Colten as an individual twice to leave. Trooper Harlowe said, "I heard Capt. Mayes tell them to leave. He's my captain, I follow his orders. I then went about telling these people to leave individually."

He told Mr. Colten to leave, Mr. Colten did not and Trooper Harlowe placed him under arrest. I submit to the Court that at this point Mr. Colten had already violated two provisions of the Kentucky disorderly conduct statute, that is, subsection (e) and subsection (f). He had obstructed traffic along with the group of individuals he was with. Notwithstanding counsel for the defense's commentary upon the case of *People v. Kagin*, that it was decided in the lowest court of New York, Your Honor, I say that though may it be decided in the lowest court of New York, Your Honor, I say that though may it be decided in the lowest court of New York, it stands as law and can be cited and should be cited in this instance because maybe it didn't involve a million people leaving Blue Grass Airport—I doubt if a million people have ever been gathered out there at one time, but there was a substantial corwd there, and they were prevented from leaving by this individual and his friends, standing in the road blocking traffic.

There can be also no question about the fact that these individuals were ordered to leave by the police and that this was a lawful order. The duties of these police that day was to keep that road clear, as Trooper Miller testified. He was attempting to do this, the other policemen there with him also knew of this duty, they were attempting to do this, and they were receiving no opperation whatsoever.

Now, Your Honor, counsel for the defense cited the recent Supreme Court decision of *Bachelor v. Maryland* and said it didn't really apply much to this situation. Well, I don't agree, and I offer a copy of the full opinion of the court, but I read two little points there. I agree with the facts, this was a situation where there was a demonstration in the draft office, but the court after reciting a few things, says that, "There is irreconcible conflict in the evidence as to what next occurred." That fits this situation pretty good. There is an irreconcilable conflict in the evidence here. The prosecution's witnesses testified that the marshalls and police officers "escorted" the petitioners outside and thaat the petitioners thereupon sat or laid down "blocking

free passage of the sidewalk." It then skips a little bit and comes down and it states, "In sharp contrast, defense witnesses said that each petitioner was thrown bodily out the door of the station and landed on his back, that the petitioners were not positioned so as to block the sidewalk completely, and that no police command was given to them to move away; rather, on the contrary, that as some of them struggled to get to their feet they were held down by the police officers until they were picked up and thrown into the patrol wagon."

Your Honor, this case is getting closer the further I read into the opinion, and I differ with Mrs. Wilson on what the court decided this case on. The court, as it specifically states, decided this case because and reversed because there was a general verdict of guilty returned, and the court states at the close of their opinion, "On this record," referring back to the testimony, "if the jury believed the state's evidence, petitioners convictions could constitutionally have rested on a finding that they sat or lay across a public sidewalk with the intent of fully blocking passage along it, or that they refused to obey police commands to stop obstructing the sidewalk in this manner and move on." Then the court goes on to say, "As far as we can tell, it is likely that the verdict resulted merely because petitioners' views about Vietnam were themselves offensive to some of their hearers."

Your Honor, this is our case. We have irreconcilable conflict, but we also have a blocking of vehicular traffic, we have a refusal to move on at the lawful order of the police, and we also have the creation of a hazardous and physically offensive condition, for I ask the Court what else did Mr. Colten's conduct amount to, once he was told to move, other than a hazardous and physically offensive condition that served no legitimate purpose?

And, Your Honor, based upon the evidence, the facts before you, I ask that a verdict of guilty be returned in this case as the statute, which has been held constitutional by a three judge court in this state, as you are aware, that this individual be held guilty under this statute.

Thank you.

THE COURT: It's at moments such as this that I can appreciate the responsibility that persons serving on the jury have. You hear excellent arguments by counsel on both sides, you've had an opportunity to see and observe the witnesses and listen to their testimony, and then you have to make your decision, and I appreciate the fact that it's not always a clear cut type of a case and gives you some concern.

In a case such as this, with a young defendant, young witnesses with him from the university, a young defendant dressing differently than what the great majority of society would believe in, maybe belonging to organizations that a lot of people would frown upon, engaging in activities that the majority of the people would not condone or believe in, the Court finds itself in the position of attempting to lean over backwards to let these young people know that they are entitled to a fair hearing, that they are to be judged in this case not on the basis of their appearance, not on the basis of the demonstration that may have taken their close to the airplane, not on the basis of organizations that they belong to, but upon the basis of the facts surrounding this particular case.

Yet in leaning over backwards to let these young people know that the courts do try to be fair, we have the other concern in that policemen in making arrests are sometimes interfered with in making that arrest, that on occasion they have been interfered with to the extent that recently in California two or three policemen lost their lives when they attempted to effect an arrest.

I'm not saying that in this instance there was any clear immediate danger to the police officers, but nonetheless I can appreciate their concern when people start gathering around at the time they are making an arrest and I appreciate the fact that they may have been somewhat apprehensive on this day in question. I am sure that they heard many things and maybe a lot of this was strictly rumor with

no basis in fact, but nonetheless, I am sure they were somewhat concerned.

I'm not going to again rule upon the constitutionality of the statute. I think we heard ample arguments on both sides, so it comes down to the question and the single question, was there disorderly conduct by the defendant on this occasion.

We heard from the police officers that a group ranging from five up through 15 people were gathered around at the time Officer Miller was attempting to issue a citation, that several cars had parked on the shoulder of the highway. You heard Trooper Miller testify that he left Mendez' automobile and went back to his car and rolled up the windows in order not to be interfered with by this particular defendand. You heard the other officers testify that on two or three occasions they asked this defendant to leave.

It may be that the police officers were hostile toward this defendant because of his appearance, he may have been physically offensive but I don't think that's a violation of the law, but I think that the police officers may have also been a little rougher in this instance than may have been necessary. I don't know, I don't find that they did or did not. I've heard the testimony, but I think the most crucial part of the testimony in this case is that Officer Harlowe, in making the arrest—this is from the defendant's own witnesses, even after he had him by the arm, again asked him if he was going to leave, and it seems inconceivable to me that he would have again asked him if he was going to leave if he had no desire that he do so.

Miss Geis' testimony that there were up to maybe 15 people gathered around and the officers asked them to leave, and the fact that the police officers did park there and block the road, while it may not have been any of the automobiles belonging to the people associated with the defendant, nonetheless, it was their actions which would have brought on the blockage of this road.

I think on the basis of the testimony, and trying to weigh it completely, and listen carefully to all of it, that the Court will have to find that the defendant is guilty of the offense of disorderly conduct in his failure to leave the premises. I think the police do have a right to get a crowd back away from them at the time they are effecting an arrest. I'm not inclined to believe that the reason they want this crowd back away from them at the time they are effecting an arrest. I'm not inclined to believe that the reason they want this crowd [illegible]ay is the fact that they want to commit brutality by the police, but I think this is the exception rather than the rule. I don't believe this is the reason. I believe it is for the protection of the officers and the protection of the person they are attempting to arrest.

I think the evidence, as I say, is sufficient to find the defendant guilty of the disorderly conduct statute, which says that "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating the risk thereof," he obstructs vehicular or pedestrian traffic, or "congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse."

I think that the last one is the category in which the Court will find he is guilty of the offense of disorderly conduct. If he had wanted to help these people, they could have remained in their cars, and after the officer had finished issuing the citation the people could have gotten out and come back and gotten into these other cars.

I appreciate the fact that he may have been wanting to help, but by the same token when the police ask him to leave and he had no lawful purpose for remaining, he should have returned to his automobile.

I find him guilty of this offense, and fix his fine at $50.00

STATE OF KENTUCKY)
) Sct.
COUNTY OF FAYETTE)

I, Thelma C. Estes, Official Court Reporter of the Fayette Circuit Court, do hereby certify that the foregoing 206 pages contained in Volumes I and II constitute a true and complete transcript of all of the evidence and proceedings had on the trial of the within styled action in the Fayette Circuit Court, Second Division, Lexington, Kentucky, before the Honorable N. Mitchell Meade, Judge of said Court, on April 24 and 27, 1970; that the said evidence and proceedings were taken down by me and correctly transcribed by me on the typewriter; that the witnesses were each duly placed under oath prior to giving their respective testimony.

Given under my hand officially as aforesaid, this the 31st day of October, 1970.

Thelma C. Estes
Official Court Reporter,
Fayette Circuit Court,
Second Division
Lexington, Kentucky.

MANDATE

THE COMMONWEALTH OF KENTUCKY,) Spring Term—
The Court of Appeals) May 21, 1971

Lewis Colten
v.
Commonwealth of Kentucky

Appeal from a judgment of the Fayette Circuit Court

The Court being sufficiently advised, it seems there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost herein expended.

A copy—Attest:

DICK VERMILLION, C.C.A.

By John O. Scott, *D. C.*

Issued June 22, 1971

OFFICE OF
CLERK OF COURT OF APPEALS
FRANKFORT

DICK VERMILLION
Clerk

July 13, 1971

Hon. Alvin L. Goldman
1692 Williamsburg Road
Lexington, Kentucky

Re: Colten (Lewis) Vs. Commonwealth of Kentucky
File #F-167-70

Dear Mr. Goldman:

Appellant's motion for stay of execution and enforcement of mandate (Exhibits attached) has been SUSTAINED by the Court.

Sincerely yours,
DICK VERMILLION, CLERK

By John C. Scott
Chief Deputy Clerk

cc: Hon. John B. Breckinridge
Attorney General
The State Capitol
Frankfort, Kentucky 40601

Clerk
Fayette Circuit Court
The Courthouse
Lexington, Kentucky